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DETERMINATIONS

OF THE

NATIONAL MEDIATION BOARD

OCTOBER 1, 1981-SEPTEMBER 30, 1982

VOLUME 9

1934

NMB 1.9:

DETERMINATIONS

OF THE

NATIONAL MEDIATION BOARD

OCTOBER 1, 1981–SEPTEMBER 30, 1982

VOLUME 9

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NATIONAL MEDIATION BOARD

Washington, D.C. 20572

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(effective June 1, 1982)

ROBERT J. BROWN, *Chairman*
(resigned June 1, 1982)

VACANCY

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DAVID M. COHEN, *Chief Hearing Officer*
ROLAND WATKINS, *Hearing Officer*
MARY L. JOHNSON, *Hearing Officer*

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INTRODUCTION

This volume is the ninth in a series published by the National Mediation Board. It covers determinations of craft or class, as well as other significant determinations of the Board relating to Section 2, Ninth of the Railway Labor Act, from October 1, 1981, through September 30, 1982. Each determination has a 9 NMB number, running from 9 NMB No. 1 through 9 NMB No. 157.

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 1

In the matter of the
REPRESENTATION OF EMPLOYEES
of
DHL AIR CARGO CORP.
Fleet Service Employees

CASE NO. R-5253

DISMISSAL-WITHDRAWN
DURING INVESTIGATION

October 7, 1981

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters on August 3, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Fleet Service Employees", employees of DHL Air Cargo Corp.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

Subsequently, the International Brotherhood of Teamsters, filed a letter with the National Mediation Board dated September 18, 1981, withdrawing the application of that organization for the services of the Board in this matter.

On the basis of the letter of withdrawal referred to above, the National Mediation Board hereby dismisses the application and closes its files in Case No. R-5253 subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 2

In the matter of the
Application of

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE
WORKERS, AFL-CIO

alleging representation disputes pursuant to Section 2, Ninth, of the Railway Labor Act

involving employees of

COMAIR, INC.

CASE NOS. R-5255 and
R-5256

FINDINGS UPON
INVESTIGATION

October 14, 1981

On August 13, 1981, the International Association of Machinists & Aerospace Workers, AFL-CIO (IAM&AW), filed applications pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. Section 152, Ninth, alleging the existence of representation disputes involving Mechanics and Related Employees and Stock Clerks, employees of Comair, Inc. Said applications were docketed as NMB Case Nos. R-5255 and R-5256, respectively.

On September 17, 1981, the Board found disputes to exist in both cases and authorized mail-ballot elections. The Carrier, on September 23, 1981, filed a "Memorandum in Support of One Collective Bargaining Unit in a Representation Election for Stock & Stores Employees, Mechanics and Related Employees." In the memorandum, the Carrier states that the IAM&AW joins in its request for a single craft or class.

ISSUE

The issue is whether the Stock Clerks and Mechanics and Related Employees of Comair constitute a single craft or class for purposes of representation under the Act.

CONTENTIONS

Comair contends that the Stock Clerks share a community of interest with the Mechanics and Related Employees and must be part of a single craft or class. The Carrier also contends that a separate craft or class of Stock Clerks and one of Mechanics and Related Employees would be inappropriate on a Carrier of its size.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 152. In this connection, the Board finds as follows:

I.

Section 201 of the Act, extends all of the provisions of Title I of the Act, except to provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce...and every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service."

II.

Comair, Inc., is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181.

III.

Section 2, Fourth, of the Act, U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representatives of the craft or class for the purposes of this Act."

IV.

Section 2, Fourth, of the Act, U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V.

IAM&AW is a labor organization and representative as defined in Section 1, Sixth, 45 U.S.C. §152, Sixth, and Section 2, Ninth, of the Act.

FINDINGS OF FACT

Comair is a commuter air carrier providing passenger and small package air transportation service to eight cities located in the states of Ohio, Kentucky, Indiana, Michigan and West Virginia. The Carrier currently leases space from the Greater Cincinnati International Airport where their maintenance and supply facilities occupy two floors. The maintenance shops exist on both levels of the facility while the parts and supplies department is located on the second floor where it is separated from the maintenance area. The Stock Clerks and the Mechanics and Related Employees have similar benefits, working hours, and compensation. During certain hours, they have the same supervisor.

DISCUSSION

I.

In its supporting memorandum, the Carrier relied mainly upon decisions rendered under the National Labor Relations Act to substantiate its request for a craft or class of Stocks & Stores Employees, Mechanics and Related Employees. It must be noted that the National Labor Relations Act provides for the selection of representatives for collective bargaining purposes by the majority of the employees in a unit appropriate for such purposes, and empowers the National Labor Relations Board to decide in each case whether "the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

The Railway Labor Act, however, deals only in crafts or classes. Thus, as the Board stated in American Airlines, Inc., 1 NMB 394 (October 1, 1945):

> "it is the duty of the National Mediation Board to determine the representation desires of airline employees on the basis of craft or class, rather than on the basis of an over-all industrial type of unit combining many occupations which might in some instances be preferred for various reasons by certain organizations and management... Accordingly, it becomes necessary to examine the occupational groupings as they have emerged over a period of years in the airline industry, and to determine whether such groupings are uniform to the extent that they might now be termed 'crafts or classes' under the provisions of the Railway Labor Act."

Decisions of the National Labor Relations Board are not binding upon the National Mediation Board. The differences and distinctions in the two acts led its way to different methods and procedures for resolving representation questions. In Air Florida, 7 NMB No. 89 (December 6, 1977), the Board concluded that:

> While the Board respects the integrity and reputation enjoyed by the NLRB, the power of the NMB to determine its own jurisdiction and resolve representation disputes is not thereby affected. The NLRB utilizes a different statute and different criteria of judgment in deciding its cases, and no rule of comity requires the NMB to abdicate its own duty to investigate by accepting NLRB determinations as dispositive under the Railway Labor Act.

II.

The representation of store employees as a separate craft or class in the airline industry is one that has developed nationally and functionally. It has become such a recognized craft or class that it is ingrained in the labor relations pattern of the in-

IV.

Section 2, Fourth, of the Act, U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V.

IAM&AW is a labor organization and representative as defined in Section 1, Sixth, 45 U.S.C. §152, Sixth, and Section 2, Ninth, of the Act.

FINDINGS OF FACT

Comair is a commuter air carrier providing passenger and small package air transportation service to eight cities located in the states of Ohio, Kentucky, Indiana, Michigan and West Virginia. The Carrier currently leases space from the Greater Cincinnati International Airport where their maintenance and supply facilities occupy two floors. The maintenance shops exist on both levels of the facility while the parts and supplies department is located on the second floor where it is separated from the maintenance area. The Stock Clerks and the Mechanics and Related Employees have similar benefits, working hours, and compensation. During certain hours, they have the same supervisor.

DISCUSSION

I.

In its supporting memorandum, the Carrier relied mainly upon decisions rendered under the National Labor Relations Act to substantiate its request for a craft or class of Stocks & Stores Employees, Mechanics and Related Employees. It must be noted that the National Labor Relations Act provides for the selection of representatives for collective bargaining purposes by the majority of the employees in a unit appropriate for such purposes, and empowers the National Labor Relations Board to decide in each case whether "the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

The Railway Labor Act, however, deals only in crafts or classes. Thus, as the Board stated in American Airlines, Inc., 1 NMB 394 (October 1, 1945):

> "it is the duty of the National Mediation Board to determine the representation desires of airline employees on the basis of craft or class, rather than on the basis of an over-all industrial type of unit combining many occupations which might in some instances be preferred for various reasons by certain organizations and management... Accordingly, it becomes necessary to examine the occupational groupings as they have emerged over a period of years in the airline industry, and to determine whether such groupings are uniform to the extent that they might now be termed 'crafts or classes' under the provisions of the Railway Labor Act."

Decisions of the National Labor Relations Board are not binding upon the National Mediation Board. The differences and distinctions in the two acts led its way to different methods and procedures for resolving representation questions. In Air Florida, 7 NMB No. 89 (December 6, 1977), the Board concluded that:

> While the Board respects the integrity and reputation enjoyed by the NLRB, the power of the NMB to determine its own jurisdiction and resolve representation disputes is not thereby affected. The NLRB utilizes a different statute and different criteria of judgment in deciding its cases, and no rule of comity requires the NMB to abdicate its own duty to investigate by accepting NLRB determinations as dispositive under the Railway Labor Act.

II.

The representation of store employees as a separate craft or class in the airline industry is one that has developed nationally and functionally. It has become such a recognized craft or class that it is ingrained in the labor relations pattern of the industry. See Western Air Lines, 4 NMB 74 (August 4, 1965) and Memorandum Re: Airline Industry Hearings, 5 NMB 2 (August 25, 1972).

In Western Airlines, supra, the Board addressed the issue of whether a group of employees referred to as Stock Clerks constitute a separate craft or class of employees within the meaning of the Act or whether these employees constitute only a portion of the craft or class of Clerical, Office, Stores, Fleet and Passenger Service Employees. Investigation revealed that Stock Clerks had become a generally recognized craft or class in the airline industry. Concluding that the Stock Clerks did not share a community of interest with those employees in other job classifications, the Board found that the Stock Clerks constitute a separate craft or class for purposes of representation under the Act.

In Braniff International Airways, 1 NMB 456 (March 18, 1948), the Board considered the issue of whether stock clerks and mechanics should constitute a single craft or class for representation purposes under the Act. The stock clerks in Braniff, like those at Comair were under the same supervision. The mechanics and stock clerks in Braniff, like those at Comair, worked in essentially the same general area. Like in the present case, there was some interchange between the mechanics and stock clerks at Braniff. The mechanics and stocks at Braniff, like their counterparts at Comair, have the same working hours. In spite of the similarities between the mechanics and stock clerks at Braniff, the Board found that a single craft or class of mechanics and stock clerks would be inappropriate. In its discussion, the Board stated:

> It is contended by UAW [United Auto Workers] that the stock clerks function as an integral part of mechanical maintenance operations of the carrier. In this respect UAW emphasizes the close working relationship between stock clerks and mechanics. Complete recognition has been given to that fact, but it cannot be divorced from the other duties of a stock clerk which reveal a close working relationship between all persons engaged in storekeeping. Thus, stock clerks perform that part of this function consisting of receiving, inspecting, sorting, storing, and issuing supplies.

> An examination of the duties of stock clerks fails to reveal any proof which would remove them from their storekeeping function. Aside from the fact that a stock clerk comes in contact, perhaps, more frequently with a mechanic than any other employee, his basic job is to store and issue mechanical tools and parts, which is an integral part of the storekeeping function regardless of the number of records he keeps and is something separate and distinct from the many different duties performed by a mechanic in the maintenance, overhaul, and repair of aircraft equipment.

In the present case, the evidence does not support a conclusion that the stock clerks perform mainly mechanical work. Their main duties include receiving, inspecting, storing and issuing supplies.

The Board finds that the crafts or classes of Mechanics and Related Employees (NMB Case No. R-5255) and Stock Clerks (NMB Case No. R-5256) are the appropriate crafts or classes.

CONCLUSION

For the reasons stated above, the request of the Carrier as stated in its "Memorandum in Support of One Collective Bargaining Unit in a Representation Election for Stocks and Stores employees, Mechanics and Related Employees" is hereby denied.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwa

cc: Mr. W. W. Winpisinger
Richard D. Siegel, Esq.
Mr. David R. Mueller
Mr. Samuel J. Cognata

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 3

In the matter of the application of the	CASE NO. R-5241
INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO	DENIAL OF APPEAL
alleging representation dispute involving employees of	October 15, 1981
AIR POLYNESIA, INC., d/b/a DHL CARGO	

On June 25, 1981, the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW), filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, 45 U.S.C. §152, Ninth, alleging the existence of representation dispute involving Mechanics and Related Employees of Air Polynesia, Inc., d/b/a DHL Cargo (DHL Cargo). Said application was docketed as NMB Case No. R-5241.

At the time the application was filed, these employees were not represented by any organization or individual.

Board Representative John B. Willits was assigned to conduct the investigation. During his investigation, Board Representative Willits ruled six individuals (Neil Aki, Martha Burman, Noma Camara, Randy Jernigan, Paul Osusky, and Carol Tengan) ineligible on the basis that these employees were Parts Handlers or Stock Clerks, and a seventh individual (John Tooley) ineligible because he performed mainly clerical duties. The Carrier has appealed these rulings.

On September 22, 1981, the Board found a dispute to exist and authorized an all mail-ballot election. Those individuals, whom the Carrier has appealed, were sent impounded ballots.

CONTENTIONS

The Carrier asserts that those seven individuals employed as parts handlers should be included in a craft or class of Mechanics and Related Employees because their duties are interrelated to and dependent upon those of the mechanics. The Carrier uses the same rationale to support inclusion of John Tooley who acts a "parts handler in the capacity of an administrative assistant" (parts handler-administrative assistant).

The IAM&AW contends that all of the above individuals are ineligible and should be excluded from the craft or class of Mechanics and Related Employees.

DISCUSSION

The seven individuals employed as Parts Handlers perform duties similar to those of Stock Clerks. Their main function is to provide the mechanics with needed parts. The Parts Handler's main duty is not mechanical. His main job is to receive and store parts, which is an integral part of the storekeeping function and distinct from the duties performed by a mechanic. See Western Airlines, 4 NMB 74 (August 4, 1965); Braniff International Airways, 1 NMB 456 (March 18, 1948); and Comair, Inc., 9 NMB No. 2 (October 14, 1981).

Investigation revealed that the Parts Handler-Administrative Assistant arranges for parts stocking, routing, pick-up and delivery. His contact with the mechanics is less than that of the other Parts Handlers. The Board finds that his duties are predominantly clerical in nature, and this position should not be included in a craft or class of Mechanics and Related Employees.

The Board thus finds that no evidence has been presented to warrant reversal of the Board Representative's rulings regarding the ineligibility of the above individuals.

CONCLUSIONS

For the reasons stated above, the Carrier's appeal is denied.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwa

9 NMB No. 4

In the matter of the	CASE NO. R-5256
REPRESENTATION OF EMPLOYEES	CERTIFICATION
of	October 19, 1981
COMAIR, INC.	
Stock Clerks	

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW), on August 11, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Stock Clerks", employees of Comair, Inc.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative Samuel J. Cognata to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Stock Clerks, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Cognata, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IAM&AW	Number of Employees Eligible
Stock Clerks	2	2

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Association of Machinists and Aerospace Workers, AFL-CIO, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Stock Clerks, employees of Comair, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 5

In the matter of the	CASE NO. R-5255
REPRESENTATION OF EMPLOYEES	CERTIFICATION
of	October 19, 1981
COMAIR, INC.	
Mechanics & Related Employees	

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW), on August 11, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Mechanics and Related Employees", employees of Comair, Inc.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative Samuel J. Cognata to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Mechanics and Related Employees, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Cognata, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IAM&AW	Number of Employees Eligibl
Mechanics & Related Employees	15	28

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Association of Machinists and Aerospace Workers, AFL-CIO, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Mechanics and Related Employees, employees of Comair, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 6

In the matter of the
REPRESENTATION OF EMPLOYEES
of
POINT COMFORT & NORTHERN
RAILWAY COMPANY
Locomotive Engineers

CASE NO. R-5271
CERTIFICATION
October 27, 1981

The services of the National Mediation Board were invoked by the United Steelworkers of America (USW), on September 23, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Locomotive Engineers", employees of the Point Comfort & Northern Railway Company.

At the time this application was received, these employees were represented by the United Transportation Union (UTU). The UTU subsequently disclaimed interest in the dispute.

The Board assigned Board Representative Thomas C. Kinsella to investigate.

FINDINGS

The investigation disclosed that a majority of eligible employees in the craft or class had signed authorization cards which authorized the USW to represent them for purposes of the Railway Labor Act.

The investigation further discloses that the Carrier did not object to representation of the craft or class by the USW.

The following is the result of the check of validity of the employees' signatures as reported by Board Representative Kinsella:

Number of Employees Signing Authorizations:

	USW	Number of Employees Eligible
Locomotive Engineers	1	1

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the United Steelworkers of America, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Locomotive Engineers, employees of the Point Comfort & Northern Railway Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 7

In the matter of the
REPRESENTATION OF EMPLOYEES
of
POINT COMFORT & NORTHERN
RAILWAY COMPANY

Conductors

CASE NO. R-5272

CERTIFICATION

October 27, 1981

The services of the National Mediation Board were invoked by the United Steelworkers of America (USW), on September 23, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Conductors", employees of the Point Comfort & Northern Railway Company.

At the time this application was received, these employees were represented by the United Transportation Union (UTU). The UTU subsequently disclaimed interest in the dispute.

The Board assigned Board Representative Thomas C. Kinsella to investigate.

FINDINGS

The investigation disclosed that a majority of eligible employees in the craft or class had signed authorization cards which authorized the USW to represent them for purposes of the Railway Labor Act.

The investigation further discloses that the Carrier did not object to representation of the craft or class by the USW.

The following is the result of the check of validity of the employees' signatures as reported by Board Representative Kinsella:

Number of Employees Signing Authorizations:

	USW	Number of Employees Eligible
Conductors	1	1

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the United Steelworkers of America, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Conductors, employees of the Point Comfort & Northern Railway Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 8

In the matter of the

REPRESENTATION OF EMPLOYEES

of

POINT COMFORT & NORTHERN
RAILWAY COMPANY

Switchmen

CASE NO. R-5273

CERTIFICATION

October 27, 1981

The services of the National Mediation Board were invoked by the United Steelworkers of America (USW), on September 23, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Switchmen", employees of the Point Comfort & Northern Railway Company.

At the time this application was received, these employees were represented by the United Transportation Union (UTU). The UTU subsequently disclaimed interest in the dispute.

The Board assigned Board Representative Thomas C. Kinsella to investigate.

FINDINGS

The investigation disclosed that a majority of eligible employees in the craft or class had signed authorization cards which authorized the USW to represent them for purposes of the Railway Labor Act.

The investigation further discloses that the Carrier did not object to representation of the craft or class by the USW.

The following is the result of the check of validity of the employees' signatures as reported by Board Representative Kinsella:

Number of Employees Signing Authorizations:

	USW	Number of Employees Eligible
Switchmen	6	6

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the United Steelworkers of America, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Switchmen, employees of the Point Comfort & Northern Railway Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 9

In the matter of the
REPRESENTATION OF EMPLOYEES
of
BELT RAILWAY COMPANY OF CHICAGO
Police Officers below the Rank of Captain

CASE NO. R-5254
CERTIFICATION
October 27, 1981

The services of the National Mediation Board were invoked by the Brotherhood of Railway, Airline and Steamship Clerks (BRAC), on August 5, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Police Officers below the Rank of Captain", employees of the Belt Railway Company of Chicago.

At the time this application was received, these employees were represented by the Police Benevolent Association-Long Island Railroad Police, Inc. (PBA-LIRR).

The Board assigned Board Representative Robert B. Martin to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Police Officers below the Rank of Captain, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Samuel J. Cognata, who was assigned to count the ballots in this case.

Number of Employees Voting:

	BRAC	PBA-LIRR	Any Other Org. or Individual	Number of Employees Eligible
Police Officers Below the Rank of Captain	14	5	6*	26

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Brotherhood of Railway, Airline and Steamship Clerks, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Police Officers Below the Rank of Captain, employees of the Belt Railway of Chicago, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/oma

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* Six ballots cast for the Belt Railway of Chicago Police Association.

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 10

In the Matter of the Application of	
UNITED TRANSPORTATION UNION	CASE NOS. R-5262 R-5263 R-5264
alleging representation disputes pursuant to the Railway Labor Act	FINDINGS UPON INVESTIGATION
involving employees of	October 29,1981
WHITE CITY TERMINAL AND UTILITIES RAILWAY COMPANY	

On September 11, 1981, the United Transportation Union (UTU) filed applications pursuant to Section 2 Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of representation disputes involving Locomotive Engineers, Brakemen and Maintenance of Way Employees, employees of the White City Terminal and Utilities Railway Company (WCTU). Said applications have been docketed as NMB Case Nos. R-5262, R-5263, and R-5264, respectively.

At the time the applications were filed, these employees were not represented by any organization or individual.

The Board assigned Board representatives Joseph Smith and Laurette Piculin to investigate the cases. During the course of the investigation, issues arose concerning the proper craft or class for purposes of representation.

ISSUE

The issue in these cases is whether the subject employees constitute a single craft or class for purposes of representation.

CONTENTION

The Carrier contends that the subject employees, along with two other classifications, constitute a single craft or class under the Act.

FINDINGS OF LAW

Determination of the issue here involved is governed by Sections 1 and 2 of the Railway Labor Act, 45 U.S.C. §151, §152. In this connection, the Board finds as follows:

I

WCTU is a carrier as defined in Section 1, First of the Act.

II

Section 2, Fourth, of the Act, 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees. . ."

III

Section 2, Ninth, of the Act, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representative of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

IV

UTU is a labor organization and representative as defined in Section 1, Sixth, and Section 2, Ninth of the Act.

FINDINGS OF FACT

The WCTU operates 13 miles of track near Medford, Oregon, which serves an industrial park in White City. The carrier employs two engineers, two brakemen, two trackmen, one yard checker, and one engineer mechanic, which it asserts are covered by the application.

The carrier asserts that there is a significant amount of interchange among and between classifications, on a regular basis, and that each of the six employees employed as engineers, brakemen or trackmen is expected to and does perform the work of the other five.

All employees are subject to the same personnel policies, fringe benefits, vacations, holidays, and rules.

DISCUSSION

The Carrier's primary argument in these cases is that it seeks to avoid fragmentation in collective bargaining which may result from establishment of more than one craft or class. However, the Board has stated that carriers and labor organizations are free to negotiate single collective bargaining agreements covering more than one craft or class. Zantop International Airlines, 8 NMB No. 189 (1981).

The Railway Labor Act provides for representation of employees by craft or class, and not on the basis of any appropriate bargaining unit such as those which are found under the National Labor Relations Act. KLM Royal Dutch Airlines, 3 NMB 1 (1953); Air Florida, 7 NMB No. 89 (1979). The Board has long held that the historical patterns of representation in the railroad industry provide the basis for craft or class determinations. First Annual Report of the National Mediation Board (Fiscal Year 1935) at 20-21; Delaware, Lackawanna & Western Railroad, 1 NMB 43 (1937); Chicago, Milwaukee, St. Paul and Pacific Railroad, 3 NMB 120 (1955).

In particular, the crafts or classes of L
motive Engineers and Brakemen were "quite gener
recognized and established long before World War
Chicago, Milwaukee, at 124. The craft or clas
Maintenance of Way Employees was well-enough es
lished by World War I that the Director Genera
Railroads signed a national agreement covering
craft or class during the period of Federal contro
the railroads. *Delaware, Lackawanna & Western Ra
road,* 1 NMB 80 (1938).

In the instant cases, no evidence has b
presented which warrants a finding that a sir
composite "craft or class" exists. The size of
carrier's workforce is not determinative of the ex
tence of crafts or classes.

CONCLUSION

The carrier's appeal and request for a hear
is denied.

Review of the case files indicates that the
has supported its applications with the necess
showing of interest. All-mail ballot elections
hereby authorized in each case using a cut-off date
October 13, 1981. Applicant UTU will appear on
ballots, and the counts will be held in Washingt
D.C.

By direction of the NATIONAL MEDIATION BOA

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. R. Sipiora
Joel H. Kaplan, Esq.
Mr. Fred A. Hardin
Mr. Howard Kenyon
Ms. Laurette Piculin
Mr. Joseph W. Smith

RKQ/dcb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 11

In the Matter of the
Application of

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS, AFL-CIO

alleging representation
disputes pursuant to Section
2, Ninth, of the Railway
Labor Act

involving employees of

AIR POLYNESIA, INC., d/b/a
DHL CARGO

CASE NOS. R-5248 and
R-5257

FINDINGS UPON
INVESTIGATION

October 29, 1981

On July 28, 1981, the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW), filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving "Flight Crew and Related Employees (Pilots, Co-Pilots, and Flight Engineers)", employees of Air Polynesia, Inc., d/b/a DHL Cargo (DHL Cargo). Said application was docketed as NMB Case No. R-5248. The application was later amended by the IAM&AW to allege representation disputes involving the crafts or classes of 1) Pilots and Co-Pilots, and 2) Flight Engineers. Said amended applications have been docketed as NMB Case Nos. R-5248 and R-5257, respectively.

At the time the applications were filed, these employees were not represented by any organization or individual.

On September 22, 1981, the Board found disputes to exist in the above cases and authorized all mail-ballot elections. The count dates for these elections were originally set for October 26, 1981.

On October 5, 1981, DHL Cargo filed a "Carrier's Request for Single Class Determinations" asserting that the pilots, co-pilots, and flight engineers constitute one craft or class for purposes of representation under the Act. Subsequently, the counts were postponed to permit consideration of this request. Ballots have been impounded pending a determination by the Board.

ISSUE

The issue is whether DHL Cargo's pilots, copilots, and flight engineers constitute a single craft or class for purposes of representation under the Act.

CONTENTIONS

DHL Cargo contends that its flight engineers share a community of interest with its pilots and copilots, and must, therefore, be part of a single craft or class under United Airlines, 3 NMB 56 (1961).

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 152. In this connection, the Board finds as follows:

I.

Section 201 of the Act, extends all of the provisions of Title I of the Act, except to provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce... and every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service."

II.

DHL Cargo is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181.

III.

Section 2, Fourth, of the Act, U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representatives of the craft or class for the purposes of this Act."

IV.

Section 2, Ninth, of the Act, U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V.

IAM&AW is a labor organization and representative as defined in Section 1, Sixth, 45 U.S.C. §152, Sixth, and Section 2, Ninth, of the Act.

FINDINGS OF FACT

Since November of 1980, DHL Cargo has required that applicants for the position of flight engineer be pilot-certificated. The last seven flight engineers whom the Carrier has hired have been so qualified. Of these seven flight engineers, four have been elevated to the position of co-pilot. There is a single seniority list for pilots, co-pilots and flight engineers.

The Carrier treats pilots, co-pilots, and flight engineers as an integrated unit of flight deck personnel. Pilots and co-pilots are regularly scheduled as flight engineers and flight engineers are regularly scheduled as co-pilots.

Salary for the pilots, co-pilots and flight engineers is derived from three components: base pay, per diem, and mileage rate. Per diem is the same for everyone. The pilot receives a higher base salary and mileage rate. Co-pilots and flight engineers have an identical base salary and mileage rate. Pilots, co-pilots, and flight engineers receive the same recurrent ground schools and ground training.

DISCUSSION

I.

In United Airlines, 8 NMB 56 (1961), the Board appointed a committee of three neutrals to consider whether flight deck members constituted a single craft or class for purposes of representation. The committee found that pilot certification was required for all flight engineers who wanted to fly in jet aircraft, that cross-training was provided at carrier expense, that employment standards for flight engineers and pilots were identical because of the career progression, and that United maintained a single seniority roster. From these facts, the Committee concluded that the flight engineer on United shared a community of interest with pilots and co-pilots as an integrated member of the flight deck crew. Accordingly, a single craft or class of flight deck crew members was found to be appropriate.

In the recent case of Zantop International Airlines, 8 NMB No. 189 (1981), the Board again considered the issue of whether flight deck employees constitute a single craft or class for purposes of representation under the Act. In reaching its conclusion to deny the Carrier's request for a single craft or class, the Board stated that:

> The present cases involve flight engineers who are nor required to be pilot-certificated, although most are voluntarily so certificated. In spite of the carrier's request that the Board ignore this most crucial element, the Board finds that the requirement that a flight engineer be pilot-certificated is the single most important factor in determining craft or class lines in the cockpit. As long as a carrier imposes no uniform requirement that all flight engineers have or obtain

> pilot training and certification, the flight engineers cannot share a community of interest with the pilots and co-pilots.

The facts in the present cases require a result different from that in Zantop, supra. DHL Cargo requires that its flight engineers be pilot-certificated. There is considerable cross-utilization among the pilots, co-pilots, and flight engineers. The Carrier has a pattern of career progression from flight engineer to co-pilot. In applying the standards enunciated in the cases of United, supra, and Zantop, supra, the Board finds that the flight engineers share a community of interest with the pilots and co-pilots. Accordingly, the Board finds that a single craft or class of flight deck crew members is appropriate for purposes of representation under the Act.

II.

The same persons who were eligible to vote in Case Nos. R-5248 and R-5257 would have been eligible had the application as originally filed been used. The Board therefore finds that the cases should be consolidated and the ballots counted as if the application had not been amended.

CONCLUSION

For the reasons stated above, the Board finds the appropriate craft or class in NMB Case No. R-5248 to be that of flight deck crew members.

ORDER

In accordance with its conclusion that the proper craft or class for purposes of representation is Flight Deck Crew Members, the Board orders:

1. The applications in Case Nos. R-5248 and R-5257 are hereby reconsolidated under Case No. R-5248 the craft or class of Flight Deck Crew Members.

2. The docket in Case No. R-5257 is dismissed.

3. The ballots received in the separate elections will be combined prior to counting, and counted as if they were part of a single case.

4. The election results will be based upon the combined lists of eligible voters and the combined ballot count.

5. Ballots will be counted at the Board's offices at 10:00 a.m. on October 30, 1981.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwa

cc: Mr. Michael N. Brown, President
DHL Cargo

Herbert A. Rosenthal, Esq.
Hausman and Rosenthal, P.C.

Patrick Lupo, Esq.
Law Firm of Peter J. Donnici

Mr. William W. Winpisinger, Int'l President
International Association of Machinists and
Aerospace Workers, AFL-CIO

Mr. William L. Scheri, Airline Coordinator
International Association of Machinists and
Aerospace Workers, AFL-CIO

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 12

In the matter of the
REPRESENTATION OF EMPLOYEES
of
DHL Cargo Corp.
Mechanics and Related Employees

CASE NO. R-5241
DISMISSAL
November 2, 1981

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO, on June 24, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Mechanics and Related Employees", employees of DHL Cargo Corp.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Mechanics and Related Employees, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IAM&AW	Number of Employees Voting
Mechanics and Related Employees	20	43

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 13

In the matter of the : CASE NO. R-5248
REPRESENTATION OF EMPLOYEES : DISMISSAL
of : November 2, 1981
DHL Cargo Corp. :
Flight Deck Crew Members :

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO, on July 21, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Flight Deck Crew Members", employees of DHL Cargo Corp.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Flight Deck Crew Members and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IAM&AW	Any Other Org. or Individual	Number of Employees Eligible
Flight Deck Crew Members	2	2*	27

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

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* two write-in votes for the Airline Pilots Association

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 14
November 2, 1981

Mr. Willie L. Clark, Jr.
Solicitor
National Labor Relations Board
Washington, DC 20570

Re: ARA Environmental Services, Inc.
NMB File No. CJ-5190
(NLRB Case No. 12-RC-6093)
NMB File No. CJ-5225
(NLRB Case No. 12-RC-6056)

Dear Mr. Clark:

This is in response to your requests for the opinion of the National Mediation Board regarding whether the above-captioned company is subject to the Railway Labor Act, 45 U.S.C. §151 et seq., pursuant to Title II of the Act. For purposes of this letter, the NMB has considered the materials provided in both cases.

We understand from the materials provided, as well as additional material supplied by the International Association of Machinists and Aerospace Workers, AFL-CIO, and Eastern Airlines, Inc., that ARA Environmental Services, Inc. (ARA-ES) is a wholly-owned subsidiary of ARA Services. This request involves contractual relationships between ARA-ES and Eastern Airlines, a "carrier" within the meaning of the Railway Labor Act, for the performance by ARA-ES of security, building maintenance, and janitorial services for Eastern in Tampa, Florida.

ARA-ES provides security personnel for Eastern in two areas, the parking lot and the passenger terminal, on a round-the-clock basis. At the parking lot, the guard is responsible for controlling access to Eastern's facilities, particularly its cargo and loading areas, and to monitoring use of parking areas. The guard also limits access by visitors, verifies that they have business with Eastern, and issues temporary passes. At the passenger terminal, screening personnel perform the security checks required for all airline passengers under Federal Aviation Administration rules. Eastern is required to perform such security checks, and may be penalized for failure to do so. Security checks include x-ray and magnemometer screenings, inspection of carry-on items, and observation of passenger behavior. Eastern does not employ any personnel at Tampa to perform passenger screening, but may provide personnel to assist in maintaining passenger flow to the security check point during heavy operating periods.

ARA-ES provides building maintenance and janitorial services for Eastern facilities in Tampa, including both the airport and reservations center. The record shows that Eastern employs similar personnel directly who may work side-by side with the ARA-ES employees. Janitorial services are provided for Eastern's non-public areas, as well as at the ticket counter, boarding area, and other public facilities. In addition, one person is assigned to the Ionosphere Club to assist the hostess in keeping the area clean, and stocked; on occasion, this employee may assist in checking in passenger baggage.

Investigation disclosed that ARA-ES retains the right to hire, discipline, reward, or discharge employees. However, Eastern retains the right to interview candidates for employment by ARA-ES, and has done so. The record also discloses that wage rates are subject to indirect control by Eastern, which compensates ARA-ES on an hourly-rate basis. Whether ARA-ES is able to offer certain fringe benefits depends upon its ability to obtain Eastern's agreement to provide reinbursement. Thus, for example, ARA-ES employees could not receive a paid meal period and breaks absent Eastern's concurrence. The number of ARA-ES employees assigned, and their shifts, is determined by Eastern; these employees wear uniforms approved by Eastern, and perform to Eastern's standards. Eastern personnel, including non-supervisory personnel, may require ARA-ES personnel to perform specific tasks, particularly in the maintenance and cleaning areas, without going through an ARA-ES supervisor.

The record further established that ARA-ES would be compelled to discipline, transfer, or discharge any employee upon request by Eastern, and that on at least one occasion ARA-ES terminated an employee for making improper advances toward Eastern employees. Eastern managers have received grievances directly from ARA-ES employees, and have resolved them through discussions with ARA-ES's manager. Examples include changes to the security personnel's uniform and construction of a new guard shack at the parking lot.

Eastern provides all necessary equipment and supplies for use by ARA-ES in fulfilling its contracts, including the passenger screening devices, cleaning supplies, and the guard shack. ARA-ES uses Eastern space as an office. Airport authority identification cards for ARA-ES employees are issued at Eastern's request and are signed by Eastern management. Eastern's passenger service manager testified at an NLRB hearing that the ARA-ES manager exercised discretion in handling his operation primarily because of the confidence which the Eastern manager had based upon their long relationship, but that greater oversight was given during a recent period when a different ARA-ES manager was stationed in Tampa.

The foregoing facts establish that ARA Environmental Services, Inc. holds contracts with a common carrier by air subject to the Railway Labor Act for the performance of services in connection with the transportation of passengers and freight by air, subject to direct and on-going control by employees of the carrier. ARA-ES is the agent of the carrier with respect to passenger screening, maintenance, and janitorial work at Tampa International Airport, Tampa, Florida.

Based upon the nature of the activities performed by ARA-ES and the degree of control exercised by Eastern Airlines, the Board is of the opinion that the activities and employees performing such activities are subject to the Railway Labor Act. Because the record provided did not discuss the scope of ARA-ES's other business dealings outside of Tampa, this opinion is necessarily limited to the facts and circumstances presented.

The documents forwarded by your letters
inquiry are enclosed. This finding may be cited as
Environmental Services, Inc., 9 NMB No. 14 (1981).

By direction of the NATIONAL MEDIATION BOA

Rowland K. Quinn,
Executive Secretar

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 15

In the Matter of the Application of	NMB Case No. R-4671
INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO	FINDINGS UPON INVESTIGATION
alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act	November 2, 1981
involving employees of	
PIEDMONT AIRLINES	

On September 8, 1976, the International Association of Machinists & Aerospace Workers, AFL-CIO (IAM&AW) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving Airline Building Maintenance Mechanics, employees of Piedmont Airlines. Said application has been docketed as NMB Case No. R-4671.

At the time the application was filed, these employees were not represented by any individual or organization. However, the IAM&AW represented the craft or class of Mechanics and Related Employees on Piedmont pursuant to the Board's certification in Case No. R-4184.

During the course of the Board's investigation, issues arose concerning whether the General Aviation Division employees of Piedmont Aviation, Inc., were subject to the jurisdiction of the Railway Labor Act, and thus covered by the application in Case No. R-4671. Pending resolution of this issue by the Board, and subsequently by the United States District Court for the Middle District of North Carolina in litigation involving NMB File No. C-4299 and Case No. R-

4184, Piedmont refused to provide a list covering any non-airline personnel.

On September 15, 1981, the Court issued an Order in Piedmont Aviation v. National Mediation Board, C-77-281 (M.D.N.C. 1981), adopting the Magistrate's Findings and Recommending, holding that General Aviation Division employees were not subject to the Railway Labor Act. On the same day, the Board dismissed three applications covering General Aviation employees. Piedmont Airlines, 8 NMB Nos. 218, 219, and 220 (1981).

However, the Board resumed its investigation in Case No. R-4671 on September 11, 1981, based upon the Magistrate's Findings and Recommendation, to which the Board and the Department of Justice had not filed exceptions. The Board found a dispute to exist and authorized an election which is currently in progress. Ballots are scheduled to be counted on November 9, 1981.

Section 3.503-5 of the Board's Representation Manual provides:

> Cut-Off Date: The list of potential eligible voters should contain all individuals with employee-employer relationships as of the last day of the last payroll period prior to the Board representative's arrival on the property, or prior to the commencement of the investigation where an on the property investigation is not utilized. If a carrier has more than one payroll period in its system, the Board representative should use the last payroll period prior to the Board representative's arrival on the property where the records are kept as the cut-off date. [Emphasis in original].

In accordance with this provision, a cut-off date of October 27, 1976, was authorized, based upon the initial arrival of a Board representative on the property. Both Piedmont and IAM&AW have protested use of this cut-off date to determine employee eligibility.

ISSUE

The issue is the appropriate cut-off date for determining which employees will be eligible to vote in the election.

CONTENTIONS

Piedmont contends that the appropriate eligibility list could not be determined prior to the resumption of the investigation following release of the Magistrate's Findings and Recommendation, because the Board's jurisdiction was definable only after the Court's decision was made. Therefore, Piedmont contends that August 28, 1981, is the appropriate cut-off date, being the last day of the payroll period prior to the resumption of the investigation.

IAM&AW contends that the same date should be utilized because the Board's investigation did not "commence" until September 9, 1981.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 152. Accordingly, the Board finds as follows:

I

Section 201 of the Act, extends all of the provisions of Title I of the Act, except the provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce...every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service."

II

Piedmont Airlines is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181.

III

Section 2, Fourth, of the Act, 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

IV

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V

The IAM&AW is a labor organization and representative as defined in Section 1, Sixth, 45 U.S.C. §151, Sixth, and Section 2, Ninth, 45 U.S.C. §152, Ninth, of the Act.

DISCUSSION

I.

The history of litigation surrounding the Board's jurisdiction over Piedmont Aviation, Inc., in other representation cases, makes the setting of this case unique with respect to the issue presented. Ordinarily, the Board's policy, as embodied in Section 3.503-5 of the Representation Manual, *supra*, is to fix the cut-off date at the outset of the investigation, and to use that date irrespective of intervening circumstances. *See, e.g., Japan Air Lines,* 7 NMB No. 154 (1980); *British Airways,* 7 NMB No. 237 (1980). *See, also, Air Canada v. NMB,* 478 F. Supp. 615 (S.D.N.Y. 1979), 107 LRRM 2028 (S.D.N.Y. 1980), 107 LRRM 2049 (2nd Cir. 1981), *cert. denied,* 108 LRRM 2923 (Nov. 2, 1981).

However, both prior to the filing of the application in Case No. R-4671, and for five years thereafter, Piedmont, IAM&AW, and the Board have been parties to substantial and protracted litigation concerning the scope of the Board's prior certification and of the RLA as applied to General Aviation Division employees. Because the Board determined that General Aviation employees were subject to the RLA and within the scope of the present application, Piedmont refused to supply a list of potential eligible voters.

Following the Magistrate's Findings and Recommendation, Piedmont immediately provided such a list for Airline Division employees when requested to do so. Neither the Board, Piedmont, nor IAM&AW has appealed from the Court's Order of September 15, 1981, and the Board no longer asserts jurisdiction over the General Aviation Division.

II.

All potentially eligible voters were sent mail ballots pending resolution of this issue.

III.

Although not adopting the contentions of Piedmont or IAM&AW, the Board concludes that the purposes of the Act in maintaining stability in labor-management relations in the airline industry would be better served by utilizing a cut-off date of August 28, 1981, in Case No. R-4671.

This determination is expressly limited to the unique facts and circumstances present in this case, including inter alia, the course of the litigation which existed independently of this case and which caused substantial delay in holding the election which was beyond the Board's control. This determination does not establish a precedent for handling of other representation cases.

CONCLUSION

The cut-off date for employee eligibility in NMB Case No. R-4671 will be August 28, 1981.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. J. E. Bradley
Mr. W. W. Winpisinger
Mr. W. L. Scheri
Mr. S. J. Cognata

RKQ/dcb

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 16

In the Matter of	CASE NO. R-1906
TERMINAL RAILWAY ALABAMA STATE DOCKS	FINDINGS UPON INVESTIGATION
	November 3, 1981

On June 11, 1981, the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW) filed an application pursuant to Section 5, First, of the Railway Labor Act, as amended, 45 U.S.C. §155, First, requesting that the Board provide mediation in a dispute between the IAM&AW and the Terminal Railway Alabama State Docks described as "Carrier refusal to bargain on Section 6 Notices, served under provisions of Title I of the Railway Labor Act, as amended, on January 26, 1981, and May 18, 1981, to amend the existing agreement."

The Terminal Railway has taken the position that the Section 6 Notice is not applicable to it because the IAM&AW does not have a collective bargaining agreement with it, and that the machinists of the Terminal Railway are represented by the Brotherhood Railway Carmen of the United States and Canada (BRC).

On October 13, 1947, the Board issued a certification in Case No. R-1906 to four organizations "operating through the Railway Employees' Department, AFL" covering, inter alia, the crafts or classes of Machinists, and Carmen, Helpers, and Apprentices. It appears that the four crafts or classes covered by the certification in Case No. R-1906 have been represented by the BRC under a single agreement since April 1, 1950.

On July 13, 1981, the Board issued an Order To Show Cause, 8 NMB No. 174, to the IAM&AW, BRC, and Terminal Railway, why the Board should not apply the rationale of Seaboard Coast Line Railroad, 8 NMB No.

109 (1981), in determining what organization represents the craft or class of Machinists on the Terminal Railway Alabama State Docks.

Statements of position were received from both organizations and the carrier in response to the Board's Order to Show Cause. On the basis of the record before it, the Board finds as follows:

ISSUE

The issue presented in the instant matter is whether the Machinists of the Terminal Railway are represented by the BRC or by the IAM&AW. Determination of this issue will resolve the question of whether the Board should docket the IAM&AW's application for mediation.

CONTENTIONS

The IAM&AW contends that it is the representative of the craft or class on the basis of the certification in Case No. R-1906, and on the basis of the employees' status as dues-paying members of the IAM&AW.

The BRC contends that it is the representative of the craft or class on the basis of the certification cited above, and on the basis of an agreement between the BRC, IAM&AW, and other organizations under which it represented the employees and collected per capita taxes as payment for its services.

The Terminal Railway contends that BRC represents the craft or class, and that it would be an undue burden to have more than one organization representing the small number of employees involved.

FINDINGS OF FACT

I.

On October 13, 1947, in NMB Case No. R-1906, the IAM&AW, BRC, International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America (IBB), and International Brotherhood of Firemen and Oilers (IBFO), "each operating through the Railway Employees Department, AFL" were certified as the representatives of the crafts or classes of (1) Machinists (2) Boilermakers, (3) Carmen, Helpers &

Apprentices, and (4) Powerhouse and Railway Shop Laborers, employees of the Alabama State Docks and Terminals.

II.

On May 28, 1948, the four organizations entered into an agreement under which BRC represented all of the crafts or classes for purposes of the Act. Each organization continued to collect dues from its members and paid per capita taxes to the BRC to defray the cost of representation. On March 19, 1979, the IAM&AW instructed its representatives to discontinue making the payments, and advised the BRC that the IAM&AW was "abrogating said agreement immediately." The Terminal Railway was advised on the same date that IAM&AW would represent Machinists thereafter.

III.

BRC and the Terminal Railway entered into a collective bargaining agreement covering all four crafts or classes on April 18, 1950. Amendments have subsequently been negotiated, and in May 1981, it was agreed that the terms and conditions of the BRC National Agreement with the National Railway Labor Conference would be applied to the employees "as if" the carrier was a party to that agreement.

On May 18, 1981, IAM&AW served the usual and customary notice under Section 6 of the Act of its desire to revise and supplement certain terms of the National Supplemental Sickness Benefit Agreement. The Terminal Railway advised IAM&AW that BRC represented the Machinists, and that it would await a determination by the NMB before negotiating with IAM&AW.

IV.

At the time the certification was issued in Case No. R-1906, the four organizations party to the dispute were members of the Railway Employees' Department, AFL[-CIO] (RED). In 1973, IAM&AW withdrew from the RED. Since 1950, it appears that BRC has continued to represent the Machinists, including negotiation of wages and work rules, and processing of grievances. It does not appear that IAM&AW officials were called upon by plant employees prior to 1979 for the administration of the BRC-Terminal Railway agreement.

V.

The RED formerly consisted of the following organizations:

Brotherhood of Railway Carmen of the United States & Canada
Int'l Association of Machinists & Aerospace Workers
Int'l Brotherhood of Boilermakers and Blacksmiths
Int'l Brotherhood of Electrical Workers
Int'l Brotherhood of Firemen and Oilers
Sheet Metal Workers International Association

In 1973, IAM&AW and SMWIA withdrew from the RED. In 1980, RED was dissolved.

On August 13, 1974, the Board stated, in response to questions raised by the IAM&AW and SMWIA withdrawals:

> Since 1935, certifications issued by the Board have been issued in the name of the particular organization "operating through the Railway Employes' Department" or a System Federation thereof, or in similar language to more accurately reflect the relationship between RED or a System Federation and the various organizations.
>
> It is the opinion of the Board that the withdrawal of the IAM&AW and SMW from RED constitutes no change in the obligation of the carriers to meet and treat with each of these organizations as the duly designated representative of employees in each craft or class on the individual railroads. The Board further finds no distinction between the situation involving certifications naming the RED itself as the representative of such employees from those issued in 1935 and thereafter which certify a particular shopcraft organization including the IAM&AW and SMW (operating through the RED).

> In view of the foregoing, the Board finds no necessity to issue amended certifications as you have requested.

Over 85% of the certifications issued by the Board in representation cases involving the RED were issued to an affiliate operating through the RED.

DISCUSSION

In Seaboard Coast Line Railroad, 8 NMB No. 109 (1981), the Board held that:

> During its existence, the RED had no independent life of its own. It represented no employees itself, and collected no dues. Rather, it was the agent of its member-unions, and it operated through them. Employees were represented within the RED by the unions having jurisdiction over their particular craft, and paid dues to the unions on that basis. An employee satisfied his obligations under union security clauses if he belonged to any one of the member-unions.
>
> In cases involving RED applications, the Board generally certified the RED "operating through" the particular affiliate whose jurisdiction covered the subject employees. Even where the certification purported to be directly to the RED or one of its System Federations, it was obvious that the member-unions would give it effect.
>
> The RED no longer exists. To best maintain stability in labor-management relations in the railroad industry, the Board holds that all certifications involving the RED are now certifications of the affiliate which actually collected dues from the employees. That is, the incumbent in any case will be the organization or organizations which in fact represented the employees, as evidenced

> by collection of dues from the employees.

The present case involves employees who have paid dues to the IAM&AW, which in turn remitted per capita taxes to the BRC, and the BRC actually represented these employees. On March 19, 1979, the IAM&AW terminated this arrangement and sought to resume active representation of the craft or class. Under these circumstances, it is not clear which organization is the representative of the employees under the certification issued in Case No. R-1906.

The rule established by the Board in the Seaboard case did not contemplate a situation such as that which has occurred in this case. Accordingly, the Board finds that the purposes of the Act in permitting employees to choose a representative for purposes of collective bargaining will be best effectuated through a secret, mail-ballot election between BRC and IAM&AW. Such an election would resolve the ambiguity present here; however, this determination does not establish a precedent for handling of other cases involving the RED.

CONCLUSION

It is hereby ordered that a mail-ballot election be conducted among the craft or class of Machinists, employees of the Terminal Railway Alabama State Docks, to determine what organization should be the representative of the craft or class. The ballot will not contain a space for write-in votes. The organization receiving the majority of the votes cast will be certified.

A Board representative will be assigned to complete the handling of this election.

Following the issuance of the new certification, the Board will determine what action is necessary with respect to the application for mediation filed by IAM&AW.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. A. B. McKenzie
Acting General Manager
Terminal Railway Alabama State Docks

Mr. W. W. Winpisinger, Int'l President
International Association of Machinists
& Aerospace Workers, AFL-CIO

Mr. George DeHague, Railroad Coordinator
International Association of Machinists
& Aerospace Workers, AFL-CIO

Mr. O. W. Jacobson, General President
Brotherhood Railway Carmen of the
U.S. & Canada

Thomas Woodley, Esq.
Mulholland & Hickey

RKQ/dcb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 1

In the Matter of the
Application of the

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

alleging a representation
dispute involving employees
of

AIRBORNE EXPRESS, INC.

CASE NO. R-526

DETERMINATION
ELIGIBILITY

November 4, 198

On September 11, 1981, the Internation
Brotherhood of Teamsters (IBT) filed an applicat
pursuant to Section 2, Ninth, of the Railway La
Act, 45 U.S.C. §152, Ninth, alleging the existence
a representation dispute involving Pilots and
Pilots, employees of Airborne Express, Inc. Sa
application was docketed as NMB Case No. R-5261.

At the time the application was filed, the
employees were not represented by any organization
individual.

On September 28, 1981, the Airborne Pilots A
sociation (APA) intervened in the above case.

Board Representative Roland Watkins was assign
to conduct the investigation. During his investiga
tion, the IBT challenged the eligibility of thr
individuals claiming that two individuals (Marti
Diblik and Al Podlesnik) should be added to th
eligibility list and one individual (John Atkins
should be deleted. In a telex dated November 2, 1981
Board Representative Watkins made the following de
terminations:

> Martin Diblik-rule[d] eligible-Diblik is a discharged employee who is currently pursuing his discharge through an applicable grievance procedure and under Section 5.304 of the NMB Representation Manual is eligible.
>
> Al Podlesnik-ruled ineligible-Podlesnik is a terminated management official and as such is ineligible.
>
> John Atkins-ruled eligible-Atkins is temporarily working as an instructor/ line pilot with a reasonable expectation of returning to full-time line pilot status in the foreseeable future.

The IBT has appealed only the determination regarding Atkins. The Carrier and APA have not filed any appeals.

On October 13, 1981, the Board found a dispute to exist and authorized an all mail-ballot election. Diblik and Podlesnik were sent impounded ballots. The count has been scheduled for November 6, 1981.

CONTENTIONS

The IBT contends that Atkins should be ruled ineligible on the basis that he has spent a preponderance of his time over the past year working as a ground school and/or flight simulator instructor in a classroom environment with no work assignments in the Pilots and Co-Pilots craft or class. APA and the Carrier contends that this individual is eligible because his present assignment is temporary and he has a reasonable expectation of returning to full-time pilot status.

FINDINGS OF FACT

Atkins was hired by the Carrier in August, 1979. From August 1979, to August 1980, Atkins flew regularly scheduled revenue flights. In August 1980, at the Carrier's request, Atkins agreed to work for a two year period in a dual capacity as an instructor in the Training Department and as a line pilot. This agreement will expire in August 1982 when Atkins resumes full-time duties as a line pilot. At all times, Atkins has retained his position on the pilots' seniority list and has remained operationally flight qualified as required by the Federal Aviation Regulations (FARS). During the month of October 1981, Atkins flew 15.1 hours as First Officer on DC-9 revenue flights. The preponderance of his duties is that of an instructor.

The Carrier employs two other individuals as instructors on a permanent basis. These instructors do not fly the line on revenue flights, are not on the pilot's seniority list like Atkins, and are not eligible voters in this case.

DISCUSSION

Investigation revealed that Atkins is presently performing the duties of an instructor. The Carrier and APA argues that Atkins' status as an instructor is only temporary and that in the near future, he will resume his line pilot duties on a full-time basis. However, the Board has stated in Chicago & North Western Railway Company, 4 NMB 240 (1965), that:

> In representation disputes the Act deals with the present status and the present interest of the employees involved and not with potential future status and potential future interests of the employees. The Board has long adhered to the established and recognized practice to vote employees in the one craft in which they are employed at the time of the election.

Applying the above practice, the Board finds that Atkins is presently working as an instructor and in a classification which is not part of the craft or class in this case. He is, therefore, ineligible to participate in this election.

CONCLUSION

Based on the above facts and pursuant to the Board's responsibilities under Section 2, Ninth, of the Railway Labor Act, as amended, the Board finds that John Atkins is ineligible.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwa

cc: Mr. Norman Greene
Roger Briton, Esq.
Michael Campbell, Esq.
Mr. Lawrence I. Byrnes
Wilma Liebman, Esq.
Mr. Dick Loy

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 18

November 5, 1981

John O'B. Clarke, Esq.
Highsaw & Mahoney
1050 17th Street, NW
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Michael E. Abram, Esq.
Cohen, Weiss & Simon
605 Third Avenue
New York, NY 10158

Wilma Liebman, Esq.
David Gzesh, Esq.
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, DC 20001

Re: NMB File No. CR-5177

Dear Gentlemen and Madam:

In connection with the hearings in the above-referenced matter, the International Brotherhood of Teamsters, International Association of Machinists & Aerospace Workers, Air Line Pilots Association and Association of Flight Attendants jointly requested that Texas Air Corp. (TAC), Texas International Airlines (TXI), and New York Air (NYA) produce numerous documents related to the formation of New York Air and its relationships with TAC, TXI, and Jet Capital Corp. On September 16, 1981, Hearing Officer Mary L. Johnson determined that the requests were premature because TAC, TXI, and NYA had not yet had an opportunity to present evidence, and that much of the information sought would be adduced during their presentations. The Hearing Officer therefore held her ruling in abeyance pending later developments in the case.

On October 27, 1981, the four labor organizations filed a joint appeal of the Hearing Officer's ruling, and requested that the Board grant their original request for production of documents. TAC, TXI, and NYA each filed statements in opposition to the unions' appeal.

There is no doubt that the Board has the right, pursuant to Section 2, Ninth, of the Railway Labor Act, to "have access to and ...power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by [the Board] to carry out the purpose and provisions" of Section 2, Ninth. Most, if not all, of the documents sought by the unions are therefore subject to the Board's right to have access to and obtain copies of records. Combined with the clear holding of ALPA v. Texas International Airlines, 502 F. Supp. 423 (E.D.N.Y. 1980), aff'd. 107 LRRM 3185 (2nd Cir. 1981), that the Board has exclusive jurisdiction to determine who is the "carrier" in this instance, no demand for relevant documents could be resisted. Although the Board has not made such a request, it is unfortunate that the companies were unwilling to produce many of the documents under the procedure arranged prior to the hearings by Hearing Officer Johnson.

However, the Board finds that a formal demand for production of the materials sought by the unions prior to the companies' presentations may unduly burden the development of a clear and orderly record. We expect that each of the three companies will bring forward substantial evidence of the type sought by the unions in making its case, and that the unions' needs will be largely met in that manner. For this reason, the Board sustains the Hearing Officer's determination to reserve a ruling on the unions' motion for production of documents.

Following the conclusion of the companies' cases, the unions will have the opportunity to present rebuttal argument and evidence. At the close of the companies' presentations, the Hearing Officer will consider any requests the unions may then have made for specific documents, based upon the state of the record at that time, and will order the production of such documents as may be necessary for development of a complete record and for an adequate rebuttal presentation.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Saul Kramer, Esq.
Joseph R. Weeks, Esq.
John Gallagher, Esq.
Margaret Spurlin, Esq.

RKQ/dcb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 19

November 6, 1981

Roger Briton, Esq.
Counsel for Airborne Pilots Association
Seham, Klein & Zelman
485 Madison Avenue
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Michael Campbell, Esq.
Counsel for Airborne Express, Inc.
Ford, Harrison, Sullivan, Lowry & Sykes
1400 Peachtree Center Harris Tower
233 Peachtree Street, N.E.
Atlanta, GA 30303

Re: Airborne Express, Inc.
NMB Case No. R-5261

Gentlemen:

This will acknowledge receipt of Mr. Briton's telex of November 5, 1981, on behalf of the Airborne Pilots Association (APA) in connection with the Board's Determination of Eligibility in the above referenced case. 9 NMB No. 17 (1981).

APA requests that the Board reconsider its determination in which the Board found John Atkins ineligible on the basis that he is presently working in a job classification which is not a part of the craft or class in this case. APA maintains that the decision is contrary to Sections 5.302, 5.303 (including recommended changes by the staff) and 5.305 of the NMB Representation Manual.

The Carrier has also requested that the Board reconsider its determination regarding Atkins for the reasons set forth in its telex of October 30, 1981, to Board Representative Roland Watkins.

However, neither the Carrier nor APA has presented any factual evidence which was not considered by the Board in its determination and, therefore, there is no basis for reconsideration. For these reasons, the request of APA and the Carrier that the Board reconsider and reverse its determination in 9 NMB No. 17 (1981) is hereby denied.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 20

In the matter of the
REPRESENTATION OF EMPLOYEES
of
AIRBORNE EXPRESS, INC.
Pilots & Co-Pilots

CASE NO. R-5261
CERTIFICATION
November 9, 1981

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters (IBT), on September 11, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Pilots & Co-Pilots", employees of Airborne Express, Inc.

At the time the application was received, these employees were not represented by any organization or individual. On September 28, 1981, the Airborne Pilots Association (APA) intervened in this case.

The Board assigned Board Representative Roland Watkins to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Pilots & Co-Pilots, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Watkins, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IBT	APA	Number of Employees Eligible
Pilots & Co-Pilots	62	37	100

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Brotherhood of Teamsters, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Pilots & Co-Pilots, employees of Airborne Express, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 21

In the matter of the : CASE NO. R-4671
REPRESENTATION OF EMPLOYEES : CERTIFICATION
of : November 10, 1981
PIEDMONT AIRLINES :
Mechanics & Related Employees :

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW), on September 8, 1976, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Airline Building Maintenance Mechanics" an accretion to the craft or class of Mechanics and Related Employees, employees of Piedmont Airlines.

At the time this application was received, these employees were not represented by any organization or individual. However, the craft or class of Mechanics and Related Employees were represented by the IAM&AW pursuant to the Board's Certification in Case No. R-4184.

The Board assigned Board Representatives Samuel J. Cognata and David M. Cohen to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Airline Building Maintenance Mechanics, an accretion to the craft or class of Mechanics and Related Employees, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Roland Watkins, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IAM&AW	Number of Employees Eligib
Mechanics and Related Employees	5	8

The National Mediation Board further finds tha the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Association of Machinists and Aeospace Workers, AFL-CIO, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, Airline Building Maintenance Mechanics, an accretion to the craft or class of Mechanics and Related Employees, employees of Piedmont Airlines, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 22
November 18, 1981

Mr. Willie L. Clark, Jr.
Solicitor
National Labor Relations Board
Washington, DC 20570

Re: DHL Corporation
NMB File No. CJ-5235
(NLRB Case No. 19-RC-10229)

Dear Mr. Clark:

This is in response to your office's request for the opinion of the National Mediation Board regarding whether the above-captioned company is subject to the Railway Labor Act, 45 U.S.C. §151 et seq.

We understand from the materials supplied by your office that DHL Corporation is a California corporation engaged in the transportation by air of various time-sensitive commodities such as documents, small parcels, newspapers, electronic parts and perishable food stuffs, plants, fruits and vegetables. Its operations are intermingled very closely with those of two of its subsidiaries - Air Polynesia d/b/a DHL Air Cargo (DHL Air Cargo) and DHL Airways, Inc., t/a DHL Airlines (DHL Airlines). DHL Air Cargo is engaged in the shipping of commodities or products by air. It is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181. See Findings Upon Investigation, 9 NMB No. 11 (1981), a copy of which is attached for your information. The Board has conducted several representation investigations on DHL Air Cargo in the past.

DHL Airlines is engaged in the interstate air transportation of property and mail in addition to interstate and overseas charter air transportation (including inclusive tour charters) of persons, their accompanied baggage and mail. It operates a scheduled commuter service covering cities in the Western United States and throughout the Eastern Seaboard as well as foreign scheduled international flights into Canada. DHL Airlines holds numerous certificates of Public Convenience and Necessity issued by the Civil Aeronautics Board, as well as an all-cargo air certificate. On the basis of these facts, the Board is of the opinion that DHL Airlines is a common carrier by air within the scope of Title II of the Railway Labor Act.

Investigation revealed that the operations of DHL Air Cargo and DHL Airlines are integrated into DHL Corporation's business. DHL Air Cargo and DHL Airlines are subject to DHL Corporation's centralized general management; financial management and control; centralized personnel procedures and administration, salary levels, fringe benefits, health benefits, and grievance procedures; common use or sharing of top management employees; centralized marketing and advertising; consolidated federal income tax returns; and single paymaster IRS classification.

DHL Corporation transports its cargo in two ways. One is through the use of aircraft owned by DHL Air Cargo or DHL Airlines. The second way is through the use of the services of another commercial air carrier, in which case a DHL Corporation employee accompanies the cargo.

The foregoing facts establish that DHL Corporation directly owns, controls, and works tandem with two common carriers by air performing services in connection with transportation of passengers and freight by air. Based upon the nature of the work performed by DHL Corporation and the degree of the integration of its operations with those of DHL Air Cargo and DHL Airlines, the Board is of the opinion that DHL Corporation is a carrier within the scope of Title II of the Railway Labor Act.

The documents forwarded by your letter of inquiry are enclosed. This finding may be cited as DHL Corporation, 9 NMB No. 22 (1981).

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 23

In the Matter of the
Application of

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURE IMPLEMENT WORKERS
OF AMERICA

alleging representation disputes pursuant to Section 2, Ninth, of the Railway Labor Act

involving employees of

ZANTOP INTERNATIONAL AIRLINES,
INC.

CASE NOS. R-5242 and
R-5249

DENIAL OF PETITION

November 24 , 1981

On June 23, 1981, the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving "Flight Crew Members (Pilots, Co-Pilots and Flight Engineers)", employees of Zantop International Airlines (Zantop). Said application was docketed as NMB Case No. R-5242.

During the course of the Board's investigation, the UAW amended its application to cover the crafts or classes of 1) Pilots and Co-Pilots, and 2) Flight Engineers. Said amended applications have been docketed as Case Nos. R-5242 and R-5249, respectively.

On July 27, 1981, the Board found disputes to exist in both cases and authorized mail-ballot elections. Ballots in these cases were counted by Board Representative Roland Watkins on September 21, 1981. The following is the result of the election as reported in Case No. R-5242:

UAW	Void Ballots	Any Other Org. or Individual	Number of Employees Eligible
88	7	4[1]	181[3]

The following is the result of the election as reported in Case No. R-5249:

UAW	Void Ballots	Any Other Org. or Individual	Number of Employees Eligible
33	4	3[2]	71

On October 5, 1981, the Carrier filed a "Petition to Deny Certification and Dismiss Application on the Basis That Less Than a Majority of Eligible Employees Cast Valid Ballots for Applicant."

CONTENTIONS

Zantop contends that any votes cast for any individual or organization other than the UAW should not be counted because to do so would mean that the UAW could be certified as a representative when in actuality, the UAW received votes of less than a majority of the eligible employees. Furthermore, Zantop contends that the Board failed to unambiguously convey its election procedures to eligible voters and thereby deprived them of a free choice in the election.

1/ 1 write-in vote for the Air Line Pilots Association
1 write-in vote for Union of Zantop Employees
1 write-in vote for In House Association
1 write-in vote for Zantop In House Association

2/ 1 write-in vote for the Air Line Pilots Association
1 write-in vote for the International Brotherhood of Teamsters
1 write-in vote for B.G. Weber (an employee of Zantop)

3/ Investigation revealed that two individuals- F. McKinley and D.Engel were inadvertently listed twice on the eligibility list. Correction of this means that the total number of eligible employees is 181.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 152. Accordingly, the Board finds as follows:

I.

Section 201 of the Act, extends all of the provisions of Title I of the Act, except the provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce... and every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service."

II.

Zantop International Airlines, Inc. is a common carrier by air as defined in Title II, Section 201 of the Act, 45 U.S.C. §181.

III.

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is "authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the Carrier."

FINDINGS OF FACT

I.

After the Board authorized elections in the above cases, the Board Representative proceeded to prepare the necessary documents for conducting representation elections in accordance with Section 12 of the NMB Representation Manual. Briefly, these procedures require the assigned Board Representative to prepare all election materials, including the Notice and Rules of Election, the ballot, the Instructions to Eligible Employees, and the ballot set. The ballot set includes two franked mailing envelopes: the white outer envelope, which is used to mail the election materials to eligible employees; and a brown ballot return envelope.

In all mail ballot elections, the NMB's official ballot, Form NMB-2, is used. The form lists the applicant organization and provides a space for write-in votes. In accordance with NMB procedures, the Board Representative prepared the necessary ballots for the mail ballot elections. The following instructions are contained on the ballot:

> INSTRUCTIONS FOR VOTING
>
> No employee is required to vote. If less than a majority of the employees cast valid ballots, no representative will be certified.

II.

In a memorandum dated August 27, 1981, and addressed to the Carrier's pilots and co-pilots, Duane A. Zantop, President of Zantop, stated:

> Within the next several days, if you have not already received it, you will receive a secret ballot from the National Mediation Board concerning the UAW's attempt to unionize you. As you will note, there is no space on the ballot for a "NO" box. Instead, you will see that the INSTRUCTIONS FOR VOTING provide that:
>
> > "No employee is required to vote. If less than a majority of employees cast valid ballots, no representative will be certified."
>
> Thus, in order to vote "NO" you must write the word "NO" across the ballot, which will result in the National Mediation Board declaring the ballot to be void, or simply do not return you ballot.

> REMEMBER, a majority of the eligible voters must cast valid ballots, and the union must have a majority of valid ballots in order to be elected as your representative.

In another memorandum dated September 2, 1981, and addressed to all of the Carrier's pilots and flight engineers, Mr. Zantop stated the following:

> By now you should have received a secret ballot from the National Mediation Board concerning the UAW's attempt to unionize you. It is important to remember that:
>
> > A BALLOT CAST FOR ANY PERSON OR LABOR ORGANIZATION OTHER THAN THE UAW IS A VALID BALLOT AND MAY BE COUNTED FOR REPRESENTATION BY THE UAW EVEN THOUGH THE UAW WAS NOT YOUR SELECTION.

The above statement was repeated in a letter from the President and dated September 4, 1981.

On September 21, 1981, after the ballots in the cases were opened and counted, Mr. Zantop sent another memorandum to all of the Carrier's employees in which the Carrier stated:

> On September 21, 1981 the National Mediation Board counted the ballots among our Flight Engineers, Pilots and Co-Pilots. In neither election did the UAW receive a majority of the valid ballots cast.
>
> Specifically, the UAW received 88 votes among Pilots and Co-Pilots, and 33 votes among Flight Engineers. However, since some employees voted for other persons and/or other labor organizations, their votes were counted toward UAW representation. Zantop is now considering the appropriateness of this procedure, which we consider to be unfair to the voters, and will challenge the election results on that basis.

II.

Along with its petition, the Carrier submitted affidavits from Donald Engel and Billy G. Weber, eligible voters in cases R-5242 and R-5249 respectively. Engel stated that he participated in the election, did not vote for the UAW but voted, instead, for another organization. In his affidavit, Weber stated that he participated in the election, did not vote for the UAW, but voted for himself.

DISCUSSION

In essence, Zantop's protest centers on two issues: the form of the ballot utilized in NMB elections, and the "majority" required for certification under the Act.

I.

The Board will consider first the appropriateness of the ballot utilized in NMB elections.

A.

The procedure established by the Board for the handling of representation cases was upheld by the United States Supreme Court in the case of the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employes v. Association for the Benefit of Non-Contract Employees, 380 U.S. 650 (1964). In upholding the form of ballot utilized by the Board in its elections, the Court stated:

> Section 2, Ninth empowers the Board to establish the rules governing elections. Moreover, it provides that in resolving representation disputes the Board is authorized "to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier." Thus, not only does the statute fail to spell out the form of any ballot that might be used but it does not even require selection by ballot. It leaves the details to the broad discretion of the Board with

> only the caveat that it "insure" freedom from carrier interference. That the details of selecting representatives were to be left for the final determination of the Board is buttressed by legislative history clearly indicating as much. See Hearings on H.R. 7650, House Committee on Interstate and Foreign Commerce, 73rd Cong., 2d Sess., 34-35.
>
> In summary, then, the selection of a ballot is a necessary incident of the Board's duty to resolve disputes. The Act expressly says as much, instructing the Board alone to establish the rules governing elections. Thus, it is clear that its decision on the matter is not subject to judicial review where there is no showing that it has acted in excess of its statutory authority.

The Court noted that the Board had amended its ballot to read as follows:

> INSTRUCTIONS FOR VOTING
>
> No employee is required to vote. If less than a majority of the employees cast valid ballots, no representative will be certified.

The above language is on all NMB ballots. The Court noted that the "amended ballot stated on its face what has been the practice of the Board in these elections since its inception.

In further support of the form of the ballot, the Court found that:

> The legislative history supports the view that the employees are to have the option of rejecting collective representation. The ballot that the Board proposes to use in future elections fully comports with this conception of the Act. Using the Board's ballot an employee may refrain from joining a union and refuse to bargain collectively. All he need do is not vote and this is considered a vote against representation under the Board's practice of requiring that a majority of the eligible voters in a

> craft or class actually vote for some representative before the election is valid. The practicalities of voting-the fact that many who favor some representation will not vote-are in favor of the employee who wants 'no union.' Indeed, the method proposed by the Board might well be more effective than providing a 'no union' box, since, if one were added, a failure to vote would then be taken as a vote approving the choice of the majority of those voting. This is the practice of the National Labor Relations Board.

In all mail ballot elections conducted by the Board, the NMB's official ballot, Form NMB-R-2, is used. The form lists the applicant organization and provides a space for write-in votes. Thus, the ballot allows the eligible voter to indicate whether he desires representation by the applicant organization or any other organization or individual. Such a ballot allows the Board to ascertain the name of the duly designated and authorized representative of the employees.

The recent case of Aspen Airways, Inc., 8 NMB No. 86 (1981), illustrates the value of such a rule. In that case, the applicant was the Aspen Airways Agents Association and the incumbent organization was the International Brotherhood of Teamsters. Investigation disclosed that a dispute existed and an election was conducted to determine the employees' representation choice. A count of the ballots produced the following results:

Total eligible voters	142
Votes for AAAA	5
Votes for the IBT	34
Any other org. or individual	54
Void	1

The 54 votes mentioned above were 54 write-in votes cast for the Air Line Employees Association, International (ALEA). As a result, ALEA was certified as the collective bargaining representative for the craft or class. Without the write-in space, the Board would not have been able to ascertain the true desires of the eligible employees.

The Board's ballots clearly state that no representative will be certified if less than a majority of eligible employees cast valid ballots. The write-in space states that the name of "ANY OTHER ORGANIZATION OR INDIVIDUAL" can be written in. In the present case as in all NMB cases, the employees were allowed the opportunity to express whether they desired representation by the applicant or by any other organization or individual. Thus, any valid votes cast by an eligible employee must be counted.

Employees were not misled as to the purpose of the write-in space. The Board will not accept post-election claims that employees who made proper use of the write-in space did not intend to vote. It is simply not logical and is contrary to the facts.

B.

Finally, it is Zantop's contention that the Board failed to unambiguously convey its election procedures to eligible voters and thereby deprived them of a free choice in the election. The Board finds that this argument lacks any merit.

Under Section 2, Ninth, of the Act, the Board is empowered to establish the rules governing the selection of a collective bargaining representative. See BRAC V. Association for the Benefit of Non-Contract Employees, supra. Pursuant to such authority, the Board has established such procedures.

In their affidavits Engel and Weber stated that they were not informed by the NMB that votes cast for any individual or organization other than the UAW could result in a UAW certification. They both stated that if they had known this, they would not have taken the risk of casting a ballot.

The Board notes that in memoranda distributed by the Carrier, the employees were specifically notified of the effect of a ballot cast for any individual or organization other than the UAW. However, each employee did cast a valid ballot indicating their choice of a collective bargaining representative. These votes were recorded in accordance with their desires. Each employee indicated that he did not want to vote for the UAW but that he wanted some other organization or individual.

II.

Zantop argues that the UAW would be certified as a representative when in actuality, the UAW received less than a majority of the eligible votes.

In Virginia Railway Company v. System Federation No. 40, 300 U.S. 515 (1937), the Supreme Court held that a union need not receive the votes of a majority of those eligible to vote in order to be certified.

In 1947, the Board sought the opinion of the Attorney General as to whether it had the power to certify a representative in an instance in which less than a majority of eligible voters cast ballots. The Attorney General replied:

> ... it is my opinion that the National Mediation Board has the power to certify a representative which receives a majority of the votes cast at an election despite the fact that less than a majority of those eligible to vote participated in the election. While the National Mediation Board has this power, it need not exercise it automatically upon finding that a majority of those participating were in favor of a particular representative. Op. Atty. Gen. (September 9, 1947).

The Board, however, has traditionally required that at least a majority of the eligible voters cast valid ballots in order to have a valid election. Once that standard has been met, the organization or individual receiving the majority of votes cast is certified. These rules are unlike procedures under the National Labor Relations Act, which certifies on the basis of the election results and does not require as a threshold standard that valid ballots be cast by a majority of the total number of eligible employees. In fact the National Mediation Board requirements for certification are much greater than those of the National Labor Relations Board, and the position advocated by Zantop would constitute a virtual barrier to organization of the air and rail industries. Such a barrier would conflict directly with the purposes of the Railway Labor Act.

In the present cases, a majority of eligible employees cast ballots. No evidence has been presented to warrant a conclusion to the contrary. Thus, the elections are valid ones.

CONCLUSION

For the reasons stated above, the Carrier's petition is hereby denied.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn Jr.

Rowland K. Quinn, Jr
Executive Secretary

RKQ/rwa

Copies to:

Mr. Duane A. Zantop
Gregory S. Muzingo, Esq.
Mr. David Gordon

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 24

In the matter of the
REPRESENTATION OF EMPLOYEES
of
ZANTOP INTERNATIONAL AIRLINES, INC.
Flight Engineers

CASE NO. R-5249
CERTIFICATION
November 24, 1981

The services of the National Mediation Board were invoked by the International Union, United Automobile, Aerospace and Agriculture Implement Workers of America (UAW), on July 22, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Flight Engineers", employees of Zantop International Airlines, Inc.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative Jack W. Cassle to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Flight Engineers and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Roland Watkins, who was assigned to count the ballots in this case.

Number of Employees Voting:

	UAW	Void Ballots	Any Other Org. or Individual	Number of Employees Eligible
Flight Engineers	33	4	3*	71

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Union, United Automobile, Aerospace and Agriculture Implement Workers of America, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Flight Engineers, employees of Zantop International Airlines, Inc., its successors assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

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* 1 write-in vote for the Air Line Pilots Association
1 write-in vote International Brotherhood of Teamsters
1 write-in vote B.G. Webber

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 25

In the matter of the
REPRESENTATION OF EMPLOYEES
of
ZANTOP INTERNATIONAL AIRLINES, INC.
Pilots & Co-Pilots

CASE NO. R-5242
CERTIFICATION
November 24, 1981

The services of the National Mediation Board were invoked by the International Union, United Automobile, Aerospace and Agriculture Implement Workers of America (UAW), on June 23, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Pilots & Co-Pilots", employees of Zantop International Airlines, Inc.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative Jack W. Cassle to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Pilots & Co-Pilots, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as eported by Board Representative Roland Watkins, who was assigned to count the ballots in this case.

Number of Employees Voting:

	UAW	Void Ballots	Any Other Org. or Individual	Number of Employees Eligible
Pilots & Co-Pilots	88	7	4*	181

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Union, United Automobile, Aerospace and Agriculture Implement Workers of America, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Pilots & Co-Pilots, employees of Zantop International Airlines, Inc., its successors assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr
Executive Secretary

RKQ/dca

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* 1 write-in vote for the Air Line Pilots Association
1 write-in vote for Union of Zantop Employees
1 write-in vote for In House Association
1 write-in vote for Zantop In House Association

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 26

In the Matter of the
Application of

BROTHERHOOD OF RAILWAY, AIR-
LINE & STEAMSHIP CLERKS,
AMERICAN RAILWAY SUPERVISORS
ASSOCIATION DIVISION

alleging a representation dis-
pute pursuant to Section 2,
Ninth, of the Railway Labor Act
involving employees of

DELPRO COMPANY

CASE NO. R-5265

DETERMINATION OF
ELIGIBILITY

November 30, 1981

On September 16, 1981, the Brotherhood of Railway, Airline and Steamship Clerks, American Railway Supervisors Association Division (BRAC-ARSA), filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving "Subordinate Officials in the Maintenance of Equipment Department (Production, Paint, Quality Control, Material, Maintenance, etc.)", employees of Delpro Company. Said application has been docketed as NMB Case No. R-5265.

At the time the application was received, these employees were not represented by any organization or individual.

The Board assigned Board representative Samuel J. Cognata to investigate.

During the course of the Board's investigation, issues arose concerning the eligibility of two employees with the title Building Maintenance Supervisor to participate in this case.

On November 20, 1981, the Board found a dispute to exist in Case No. R-5265, and ordered that an election be held to determine the employees' representation choice.

ISSUE

The issue is whether the classification of Building Maintenance Supervisor is part of the craft or class of Subordinate Officials in the Maintenance of Equipment Department on Delpro.

CONTENTIONS

BRAC-ARSA contends that the Building Maintenance Supervisors are not eligible because they are not part of the craft or class.

Delpro contends that the duties, responsibilities, and work performed by these supervisors creates a community of interest with other supervisors in the subject craft or class.

FINDINGS OF LAW

Determination of the issue(s) here involved is governed by Sections 1 and 2 of the Railway Labor Act, 45 U.S.C. §151, §152. In this connection, the Board finds as follows:

I

Section 2, Fourth, of the Act, 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representative of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees..."

II

Section 2, Ninth, of the Act, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representative of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

III

BRAC-ARSA is a labor organization and representative as defined in Section 1, Sixth, and Section 2, Ninth, of the Act.

IV

Delpro Company is a carrier as defined in Section 1, First, of the Act.

FINDINGS OF FACT

Delpro is a repair and maintenance facility located in Bear, Delaware, which is a wholly-owned subsidiary of Trailer Train Company (TTX). Delpro's sole business is the repair and maintenance of railroad rolling stock owned by TTX and its subsidiaries. The structure and relationship between Delpro and TTX have been extensively discussed in earlier Board cases and need not be restated here. See, Delpro, 8 NMB Nos. 2 and 16 (1980). See, also, Delpro Co. v. Brotherhood Railway Carmen, 108 LRRM 2123 (D.Del. 1981).

All supervisors in the craft or class, and the building maintenance supervisors who are subject of this appeal, work in the same facility. Unlike an operating railroad, the carrier has no building and bridge division which is responsible for maintenance of way along an extended system. Rather, Delpro has only one site.

All supervisors have the same work week, are in the same salary range, and receive the same benefits. Their authority is identical with respect to hiring, assignment of work, discipline, grievance handling, use of overtime, attendance control, and other duties. Supervisors wear a uniform supplied by the company, unlike rank-and-file employees. The building maintenance supervisors supervise the work of twenty-two employees who are part of the craft or class of Carmen, Helpers and Apprentices on Delpro, which is represented by the Brotherhood Railway Carmen of the U.S. and Canada.

Building Maintenance supervisors supervise all maintenance of equipment at the carrier's plant which is utilized in performing car maintenance and repair.

DISCUSSION

Due to the special nature of Delpro's operations, including the single-plant location, close interrelationship of production functions, constant contact among supervisors, intermingling of the work force, and absence of an operating rail system, the Board concludes that the purposes of the Act would be best effectuated by placing the Building Maintenance Supervisors in the craft or class of Subordinate Officials in the Maintenance of Equipment Department.

CONCLUSION

Building Maintenance supervisors are included within the craft or class of Subordinate Officials in the Maintenance of Equipment Department on Delpro, and are eligible to participate in the election to be conducted in this case.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. Gerald Okada
Thomas A. Greaves, III, Esq.
Mr. R. I. Kilroy
Mr. Frank Ferlin
Mr. S. J. Cognata

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 27

In the matter of the : CASE NO. R-5262
:
REPRESENTATION OF EMPLOYEES : DISMISSAL
:
of : November 30, 1981
:
WHITE CITY TERMINAL AND :
UTILITIES COMPANY :
:
Locomotive Engineers :

The services of the National Mediation Board were invoked by the United Transportation Union (UTU), on September 11, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Locomotive Engineers", employees of the White City Terminal and Utilities Company.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representatives Joseph W. Smith and Laurette Piculin to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Locomotive Engineers, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative David M. Cohen, who was assigned to count the ballots in this case.

Number of Employees Voting:

	UTU	Number of Employees Eligible
Locomotive Engineers	1	2

The National Mediation Board further finds that the carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

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NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 28

In the matter of the
REPRESENTATION OF EMPLOYEES
of
WHITE CITY TERMINAL AND UTILITIES COMPANY
Brakemen

CASE NO. R-5263
DISMISSAL
November 30, 1981

The services of the National Mediation Board were invoked by the United Transportation Union (UTU), on September 11, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Brakemen" employees of the White City Terminal and Utilities Company.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representatives Joseph W. Smith and Laurette Piculin to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Brakemen and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative David M. Cohen, who was assigned to count the ballots in this case.

copy available

Number of Employees Voting:

	UTU	Number of Employees Eligible
Brakemen	0	2

The National Mediation Board further finds that the carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 29

In the matter of the

REPRESENTATION OF EMPLOYEES

of

WHITE CITY TERMINAL AND
UTILITIES COMPANY

Maintenance of Way Employees

CASE NO. R-5264

DISMISSAL

November 30, 1981

The services of the National Mediation Board were invoked by the United Transportation Union (UTU), on September 11, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Maintenance of Way Employees", employees of the White City Terminal and Utilities Company.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representatives Joseph W. Smith and Laurette Piculin to investigation.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Maintenance of Way Employees and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative David M. Cohen, who was assigned to count the ballots in this case.

Number of Employees Voting:

	UTU	Number of Employees Eligible
Maintenance of Way Employees	0	2

The National Mediation Board further finds that the carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 30
December 1, 1981

Mr. Jerry C. Atkins, President
Sky West Airlines
Box T
Municipal Airport
St. George, UT 84770

Mr. Victor J. Herbert, President
Air Line Employees Association
5600 S. Central Avenue
Chicago, IL 60638

Re: NMB Case No. R-5259
Sky West Airlines

Gentlemen:

On September 4, 1981, the Air Line Employees Association, ALPA-AFL-CIO (ALEA) filed with the Board an application for investigation of a representation dispute. Said application, filed pursuant to Section 2, Ninth, of the Railway Labor Act, encompassed "Passenger Service (Station Agents and Reservation Agents), employed by Sky West Airlines. This case has been docketed as NMB Case No. R-5259.

Board Representative John B. Willits was assigned to the case and conducted an investigation on October 21, 1981. During the course of that investigation, Sky West contended that certain employees designated as "ramp service personnel" were inadvertently included on the list of passenger service employees and should be excluded from any Board election held among members of that craft or class. Additionally, ALEA asserted that "passenger service managers" had been inadvertently omitted from the list of eligible voters and should be properly included in the Board's election.

Board Representative Willits ruled the ramp service employees eligible and sent the passenger service managers ballots to be impounded pending a determination of this issue by the Board. The Carrier was given until November 12, 1981, to file an appeal of the ramp service ruling and ALEA was given (via telex of November 17, 1981) until November 27, 1981, to file a statement in support of its contention that passenger service managers are eligible to vote in a passenger service employees election.

Sky West filed its appeal on October 29, 1981. ALEA did not file a statement by November 27, 1981. Any further position statements by ALEA regarding the passenger service managers will be considered untimely.

It is the Board's determination that Board Representative Willits' decision to exclude the passenger service managers from the craft or class of passenger service employees on Sky West Airlines is correct. The Board has received no evidence in support of ALEA's position that these managers are employees or subordinate officials under the Railway Labor Act.

The Board further finds that Board Representative Willits did not err in his ruling on the eligibility of the ramp service employees. On October 21, 1981, the Carrier submitted a job description for "ramp service personnel" which reads in part as follows:

> "A ramp agent shall be knowledgeable in and capable of carrying out the following tasks related to assisting in operating a ticket counter and related passenger services at the location assigned..."

In its October 29, appeal of Board Representative Willits' ruling, Sky West states:

> "Enclosed for your reference is a copy of said job description [ramp service personnel] and in the first paragraph, inadvertently, the word 'passenger' service appears

> rather than ramp service. That job description should be corrected to read, 'related ramp service at the locations assigned.'"

Additionally, the Carrier cites the Board's decisions in United Airlines, Inc., 6 NMB No. 1027, Case No. R-4550 (1978), and Trans World Airlines, Inc., 6 NMB 1181, Case No. R-4549 (1979), in support of its contention that ramp agents are separate and distinct from passenger service employees.

The Board finds the Carrier's arguments unpersuasive. As this Board has stated many times, craft or class determinations are made on a case by case basis. In this case, there was sufficient basis for Board Representative Willits to rule that ramp service employees were part of the Passenger Service craft or class on Sky West Airlines.

Accordingly, the Board upholds Board Representative Willits' ruling on the eligibility of ramp service employees. In addition, the Board directs that the passenger service managers' ballots remain impounded and not be counted in the election.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.

Rowland K. Quinn, Jr.
Executive Secretary

cc: J. Ralph Atkin, Esq.
Wyatt Johnson, Esq.

RKQ/mja

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 31

In the matter of the	CASE NO. R-5259
REPRESENTATION OF EMPLOYEES	DISMISSAL
of	December 3, 1981
SKY WEST AIRLINES	
Passenger Service Employees	

The services of the National Mediation Board were invoked by the Air Line Employees Association, International (ALEA), on September 4, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Passenger Service Employees", employees of Sky West Airlines.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Passenger Service Employees and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	ALEA	Number of Employees Eligible
Passenger Service Employees	9	44

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K Quinn Jr.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 32
December 9, 1981

Joseph Z. Fleming, Esq.
Fleming & Huck
620 Ingraham Building
25 Southwest Second Avenue
Miami, FL 33131

Re: Request for NMB Ruling
Regarding Status Quo Conditions

Dear Mr. Fleming:

This is in response to your letter dated November 23, 1981, addressed to NMB Executive Secretary Rowland K. Quinn, Jr., in care of the U.S. Department of Justice. We have been advised by the Department of Justice that the response should be issued by this agency.

Your subject letter requests that this agency issue "...a ruling confirming the *status quo* should be maintained by the continuation of the prior meetings and compliance with the Rules and Pay Plan provisions in accordance with the Railway Labor Act provisions relating to the *status quo*." Your letter further states that if you have not heard from the Board by December 15, 1981, regarding your request "...Air Florida will not only assume that its interpretation is regarded as correct by the Board but, also, that the Negotiating Committees should be permitted to meet..."

Please be advised that this agency finds your request herein to be most inappropriate. It was less than five months ago that the Board responded to a previous *status quo* inquiry from you. *Air Florida, Inc.*, 8 NMB No. 184 (1981):

> "The Board does not issue advisory opinions....Any question of what the status quo is in this case must be resolved in a more appropriate forum."

The Board's position in 8 NMB No. 184 is no less applicable to the circumstances of your November 23, 1981, request. Specifically, the Board does not issue advisory legal opinions. Any inquiries you may have with regard to the particular status quo obligations herein must be resolved in another forum.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

copies to:

Mr. Eli Timoner
Joseph P. Manners, Esq.
Wyatt Johnson, Esq.
John-Edward Alley, Esq.
U.S. Department of Justice

RKQ/rea

1934

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 33

In the matter of the	CASE NO. R-5277
REPRESENTATION OF EMPLOYEES	DISMISSAL
of	December 8, 1981
SOUTHERN PACIFIC TRANSPORTATION COMPANY (T&L Lines)	
Police Officers below the Rank of Captain	

The services of the National Mediation Board were invoked by the Brotherhood of Railway, Airline and Steamship Clerks (BRAC), on October 13, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Police Officers below the Rank of Captain", employees of Southern Pacific Transportation Company.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Joseph E. Anderson to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Police Officers below the Rank of Captain, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Anderson, who was assigned to count the ballots in this case.

Number of Employees Voting:

	BRAC	Number of Employees Eligible
Police Officers below the Rank of Captain	20	61

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 34

In the Matter of the
Application of the

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

alleging representation disputes pursuant to Section 2,
Ninth, of the Railway Labor
Act

involving employees of

MERCURY SERVICES, INC.

CASE NOS. R-5250 and
R-5251

FINDINGS UPON
INVESTIGATION

December 7, 1981

On July 27, 1981, the International Brotherhood of Teamsters (IBT) filed applications pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of representation disputes involving individuals employed by Mercury Services, Inc. described as "Fleet Service Employees" and "Mechanics and Related Employees." Said applications were docketed as NMB Case Nos. R-5250 and R-5251 respectively.

At the time of the IBT's applications, these personnel were not represented by any labor organization.

During the course of the Board's field investigation, the question arose as to whether the crafts or classes sought to be represented by the IBT constitute appropriate crafts or classes within the meaning of the Act, and if not, what are the appropriate crafts or classes and what employee classifications would constitute the proper crafts or classes.

ISSUES

On the basis of the Board's investigation, the issues in these two cases are as follows:

1. Whether a craft or class of Fleet Service Employees exists on the Carrier, and if so, what classifications are properly includable within such craft or class;
2. Whether a craft or class of Mechanics and Related Employees exists on the Carrier, and if so, what classifications are properly includable within such craft or class.

CONTENTIONS

Carrier maintains that the appropriate craft or class should consist of those individuals employed by Mercury Services, Inc., Mercury Refueling, Inc., Crew Transit, Inc., each of which is a wholly owned subsidiary, of IPM Technology, and Reno Flying Service, a division of IPM Technology, and employed in the following classifications:

Ramp Service
Cabin Service
Refueling
Refueling Maintenance
Ground Equipment Maintenance
Warehousemen
A&P Mechanics
Crew Service Drivers
Security Agents
Dispatchers
Ticket Agents
Porters

The IBT contends that the appropriate crafts or classes should consist of only these employees of Mercury Services, Inc.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 152. In this connection, the Board finds as follows:

I.

Section 201 of the Act, extends all of the provisions of Title I of the Act, except the provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce...and every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service."

II.

Mercury Services, Inc., is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181. See Mercury Services, Inc., 8 NMB No. 13 (1980).

III.

Section 2, Fourth, of the Act, 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representatives of the craft or class for the purposes of this Act."

IV.

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V.

The IBT is a labor organization and representative as defined in Section 1, Sixth, 45 U.S.C. §151, Sixth, and Section 2, Ninth, of the Act.

FINDINGS OF FACT

I.

Mercury Services, Inc. (Mercury Services), is incorporated in the state of California where it is engaged in the business of furnishing ground support services to various international carriers such as Lufthansa Airlines, Japan Airlines, and Air France. The Carrier's facility is located at Los Angeles Airport.

Mercury Services is divided into various departments. The Ramp Department consists of ramp agents whose main duty is to load and unload baggage, freight and mail from aircrafts to ground locations and back. The ramp agents also operate all the necessary equipment to accomplish these tasks including forklifts, loaders, tractors and belt loaders. They also provide other ground support through the operation of electrical power units, air conditioning units, and lavatory and water trucks.

The Cabin Service Department is comprised of two classifications: cleaner and driver. The former is responsible for cleaning the interiors of the aircraft and restocking the lavatory supplies. The latter operates a "stocking" unit and also performs some cleaning work in the aircraft. These employees work in crews which are directed by working leads who in turn report to the Assistant Managers.

The Dispatch Department consists of dispatchers who receive information on aircraft schedule changes on a daily basis. This information is disseminated to Mercury Services, Mercury Refueling, Inc. (Mercury Refueling), and Crew Transit, Inc. (Crew Transit). These employees are not licensed dispatchers under the Federal Aviation Regulations. Dispatchers also keep a "call log", which is a record of all customer calls, and a log of employees who call in sick or late. They also review flight sheets, which are invoices of services provided, to be sure that all services are properly charged.

The Carrier also employs porters and ticket agents. These porters pick up the bags at the curb, weigh them, and pass them to employees in the Ramp Department for loading. The Ticket Agents do not sell tickets but assist in passenger check-in and handle aircraft documentation. This service is provided only for charter flights and tours. In addition, employees are furnished by Mercury Services to perform normal ticket agent duties for carriers such as Lufthansa. Mercury Services also furnishes hostesses for British Airways VIP lounge at Los Angeles Airport.

The Warehouse Department provides on-premises handling of freight including palletizing and break down cargo for Japan Air Lines and Lufthansa. At Japan Air Lines, the warehousemen transport freight to and from planes; receive and palletize freight; load and unload trucks at the warehouse; run transfers of freight to and from airlines other than Japan Air Lines; and operate and maintain warehouse equipment. At Lufthansa, the warehousemen's main duties consist of loading and unloading containers of freight.

Maintenance Department employees maintain the Carrier's ground equipment as well as ground equipment for certain carriers under contract with the Carrier. These employees are also responsible for the general maintenance of the carrier's facilities. The Carrier also has a group of individuals who perform building maintenance duties.

The Carrier also employs several airframe and power plants mechanics. These employees perform maintenance work on charter air freight when needed.

II.

Mercury Refueling is incorporated in the state of Nevada where it is engaged in the business of furnishing ground support services to various airlines. Mercury Refueling provides mainly refueling services for corporate and general aviation at nine locations in the states of California, Arizona, and Washington. This company also provides services for various agencies of the Defense Department. At almost all of its facilities, Mercury Refueling employs Fuelers who provide fuel service. There is no functional integration of work among the sites and no general interchange of employment.

Mercury Refueling also employs mechanics who maintain and repair refueling vehicles.

III.

Crew Transit, Inc. (Crew Transit), is a California Corporation engaged in the business of providing ground services to various international airline carriers at the Los Angeles Airport and at the airport in Burbank, California.

Crew Transit employs security personnel who provide security service by checking baggage through X-ray machines, and conducting passenger searches using hand scanners and metal detectors. Crew Transit drivers transport crews to and from their lodgings at the various facilities.

IV.

Reno Flying Services, Inc., a division of IPM Technology, provides ground support services for certain carriers at its only facility in Reno, Nevada. Reno Flying is run by a manager who determines all benefits, wages, hiring, firing, etc. for the employees at the facility. Personnel files for Reno Flying are kept at the facility. There is no integration of function between Reno Flying and the other subsidiaries.

V.

There is virtually no functional integration of operations or personnel between Mercury Services, Mercury Refueling, Crew Transit, or Reno Flying. Whenever any maintenace work is performed by Mercury Services for Crew Transit or Mercury Refueling, the two subsidiaries are billed for this work. Mercury Services, Mercury Refueling and Crew Transit all have separate contracts, not necessarily with the same carriers, to perform their various services. If employees of the three subsidiaries show up at the same aircraft at the same time to perform services, it is purely coincidental. The work is scheduled through each subsidiary or department thereof.

Each subsidiary and Reno Flying has its own supervisory structure, its own contracts with customers, and does its own hiring, firing, disciplining, promoting and granting of wage increases.

DISCUSSION

I.

The threshhold question in this instance is whether for representation purposes, there should be a single craft or class comprised of the appropriate employees of the three subsidiaries of IPM Technology - Mercury Services, Mercury Refueling, Crew Transit - and its division - Reno Flying.

A.

The Carrier contends that the craft or class should encompass these four entities but the facts do not support such a conclusion. Although these entities do come under the same corporate umbrella, they operate as separate enterprises. Each has its own supervisory structure, enters into its contracts and determines and administers its own personnel policy.

Investigation revealed that there is no integration of operations or employees among the entities. Whenever work is performed by one for the other, the entity receiving the service is billed like any other customer. Thus, for all intent and purposes, the entities treat each other as separate customers.

Each company performs separate and distinct services.

B.

The parent-subsidiary relationship was considered by the Board in the recent case of Republic Airlines, Inc., 8 NMB No. 15 (1980). In that case, the issue was whether Republic Airlines (the parent corporation) and Republic West (the subsidiary corporation) were a single carrier for purposes of the Railway Labor Act. In concluding that Republic Airlines and Republic West were a single carrier, the Board noted that Republic Airlines and Republic West held itself out to the public as a single airline, shared management, and that the two operate as a single airline. Applying the facts in this case to the criteria in the Republic case compels a different result. Mercury Services, Mercury Refueling, Crew Transit, and Reno Flying have held themselves out to the public as separate companies, do not share management, and operate as separate entities.

The investigation reveals that Mercury Services, Mercury Refueling, Crew Transit and Reno Flying are separate companies and each must meet the standards of the Act for the Act to apply to its operations. The appropriate crafts or classes in the present cases should thus consist of only the employees of Mercury Services.

II.

Turning now to the appropriate crafts or classes, the Board stated in Air Canada, 6 NMB No. 1216 (1979) that the functional integration, work-related community of interest, work classifications, terms and conditions of employment, and salary and fringe benefits of the employees are examined in determining the existence of a craft or class.

A.

As stated in Memorandum Re Airline Industry Hearings, 5 NMB 2 (1972), when the Board speaks of fleet service, it refers to those employees who perform the following duties:

1. Load and unload aircraft or baggage, express, freight, mail, company material, buffet and food supplies;
2. Deliver and pick up baggage and freight to and from baggage and freight areas;
3. Sort baggage and freight;
4. Operate and position ramp equipment and motorized ground equipment (vehicles);
5. Complete required paperwork directly associated with the movement of baggage, freight, buffet and food supplies;

Applying the above standards to the present facts in R-5250, the Board finds that the craft or class of Fleet Service Employees should include the classifications of Ramp Agents and Warehousemen and their leads.

B.

The Board has long recognized the Mechanics and Related Employees as an identifiable craft or class. See American Airlines, Inc., 1 NMB 394 (1945) and United Airlines, Inc., 6 NMB No. 863 (1977). This craft or class was clearly defined in National Airlines, Inc., 1 NMB 423 (1947) as follows and has been consistently applied by the Board since this determination:

> A. Mechanics who perform maintenance work on aircraft, engine, radio or accessory equipment.
>
> B. Ground service personnel who perform work generally described as follows: washing and cleaning airplane, engine, and accessory parts in overhaul shops: fueling of aircraft and ground equipment; maintenance of ground and ramp equipment; maintenance of buildings, hangars, and related equipment; cleaning and maintaining the interior and exterior of aircraft; servicing and control of cabin service equipment; air conditioning of aircraft; cleaning of airport hangars, buildings, hangar and ramp equipment.
>
> C. Plant maintenance personnel, including employees who perform work consisting of repairs, alterations, additions to and maintenance of buildings, hangars, and the repair, maintenance and operation of related equipment including automatic equipment.

The functional connection between the mechanics and the related employees in such a craft or class was confirmed in Eastern Airlines, 4 NMB 54 (1965):

> The related employees in the present craft or class [Mechanics and Related Employees], while of different skill levels from the mechanics, nonetheless are closely related to them in that they are engaged in a common function - the maintenance function on an airline of which the maintenance of airplanes and the maintenance of mobile ground equipment or of fixed facilities are all integral parts....
>
> The significant community of interest relates to the fact that all members of the present craft or class are engaged in performing the same general function - maintenance of the airline, whether it be maintenance of aircraft, of buildings, or of equipment.

Based on the above determinations and the facts in the present case, the Board finds that in R-5251 those individuals employed as airframe and power plants mechanics, cabin service employees and maintenance mechanics including the building maintenance mechanics constitute an appropriate craft or class of Mechanics and Related Employees for representation purposes.

CONCLUSION

On the basis of the evidence gathered in the investigation, the Board has reached the following conclusions with regards to NMB Case Nos. R-5250 and R-5251:

1. In R-5250, the Board finds that the craft or class of Fleet Service Employees of Mercury Services, Inc., is a proper craft or class for representation purposes. Said craft or class shall consist of Ramp Agents and Warehousemen and their leads.

2. In R-5251, the Board finds that the craft or class of Mechanics and Related Employees of Mercury Services, Inc., is a proper craft or class for representation purposes. Said craft or class shall consist of Airframe and Power Plant Mechanics, Cabin Service Employees, and the Maintenance Mechanics including the building maintenance mechanics and all Leads.

Consistent with staff availability, a Board Representative will be promptly assigned to complete the investigation of these cases.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. Norman Greene
Mr. Ray Frankowski
Kenneth P. Young, Esq.
Clifford P. Chaiet, Esq.
Mr. S. Kahn

RKQ/rwb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 35

In the Matter of the
Application of the

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act

involving employees of

AIRBORNE EXPRESS, INC.

CASE NO. R-5260

FINDINGS UPON
INVESTIGATION -
DISMISSAL

December 10, 1981

On September 9, 1981, the International Brotherhood of Teamsters (IBT) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving individuals described as "Fleet Service Employees (Loadmasters)", employees of Airborne Express, Inc.(Airborne Express). Said application was docketed as NMB Case No. R-5260.

At the time of the application, these employees were not represented by any individual or labor organization.

Board Representative Roland Watkins was assigned to conduct the investigation. During the course of the field investigation, a question arose as to whether the craft or class sought to be represented by the IBT is an appropriate craft or class within the meaning of the Act. Board Representative Watkins requested that the IBT and the Carrier submit position statements along with any other evidence that they desired to submit regarding this question.

CONTENTIONS

The IBT asserts that the appropriate craft or class is that of Loadmasters. The IBT contends that these individuals have unique job duties and functions and do not share a community interest with any of the Carrier's other employees.

The Carrier asserts that the appropriate craft or class is that of Fleet Service Employees consisting of all Ramp Employees (including Outbased Ramp Employees), Sorters and Loadmasters.

ISSUES

On the basis of the investigation conducted, the issue for determination is whether the single classification encompassed by the IBT application constitutes on this Carrier an appropriate craft or class for purposes of representation under the Railway Labor Act, as amended.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 152. Accordingly, the Board finds as follows:

I.

Section 201 of the Act, extends all of the provisions of Title I of the Act, except the provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce...and every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service."

II.

Airborne Express, Inc., is a common carrier by air as defined in Title II, Section 201 of the Act, 45 U.S.C. §181.

III.

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is "authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the Carrier."

IV.

The IBT is a labor organization and representative as defined in Section 1. Sixth, 45 U.S.C. §151, Sixth, and Section 2, Ninth, of the Act.

FINDINGS OF FACT

The Board has considered all the evidence presented in this case including the statements filed by the IBT and the Carrier with their accompanying affidavits and exhibits. Upon this evidence, the Board finds as follows:

I.

Airborne Express, a division of Airborne Freight Corporation, is an all cargo, overnight express airline, guaranteeing to its customers next day delivery of their packages. The Carrier services approximately eighty cities around the country. Packages are transported by Airborne Freight to the nearest airport, loaded on Airborne Express aircraft, and flown to the Carrier's central hub. The central hub is a 450-acre facility called Airborne Air Park which is located in Wilmington, Ohio. The Carrier operates its own airport at this facility and a multi-million dollar complex called the Sort Center where the shipments are unloaded, sorted, processed, and reloaded onto aircraft going to their destination.

II.

The job descriptions of the employees handling the freight are as follows:

RAMP EMPLOYEES

Basic responsibility is the unloading and loading of specific aircraft through procedures which include: setting up of machinery for nightly operations, parking and directing of aircraft, unloading and loading freight, sorting freight by destination, reporting problems to supervisors, recording weight and balance information, recording aircraft load, and completing nightly hamper repair.

OUTBASED RAMP EMPLOYEES

Basic responsibility is for turning aircraft in a timely manner through procedures which include handling freight, reviewing problems, loading and unloading freight on aircraft, sorting freight by destinations, proper handling of hazardous materials freight and paper work for hazardous materials freight in compliance with regulations.

LOADMASTERS

Basic responsibility is the unloading and loading of specific aircraft through procedures which include accompanying freight on specified routes to assure that aircraft are loaded and unloaded properly, off-loading freight to proper destinations, completing en route sorting of mixed hampers of freight, properly securing freight, handling and accepting hazardous materials freight and paper work for hazardous materials freight in compliance with regulations, checking freight for proper markings, assisting in hamper control, staging hampers, reporting hamper locations, and loading, unloading and sorting hampers.

SORTERS

Basic responsibility is sorting freight through procedures which include setting up sort area with hamper and control cards, assisting in reporting discrepancies, pushing freight from conveyor down slide to sort, sorting freight by destinations, ensuring control cards and hampers are of the same destinations, scaling hampers and staging single-destination hampers, moving hampers containing over-sized freight to proper sorting areas, assisting in unloading and loading freight on aircraft and trucks, obtaining hamper counts, and cleaning the sort area.

III.

The Loadmasters and the Ramp Employees, including outbased employees, load and unload freight. Loadmasters handle freight on the Carrier's YS-11 aircraft which serve cities close to Wilmington and small cities.The Loadmasters also secure the freight on the aircraft. Airborne Express assigns Loadmasters to fly with the freight to certain cities because it is not economically feasible to employ a sufficient full-time staff of ramp personnel at every station to perform the unloading and loading of the airplane at that particular city DC-9 aircraft are used to service the larger or more distant cities and in that instance, Ramp Employees handle and secure the freight; Loadmasters do not accompany the freight on DC-9 flights.

At the Wilmington facility, Loadmasters, Ramp Employees and Sorters sort, categorize and load packages onto the aircraft. If any cargo needs to be secured inside the aircraft, both Loadmasters and Ramp Employees perform this function. Loadmasters, like the Ramp Employees, use mechanical loaders, and drive cargo tugs in the performance of their duties.

While the aircraft is in flight, the Loadmaster does not perform any significant duties. He is not considered part of the flight crew. Once the aircraft has reached its destination, whether it is Wilmington or any other city, the Loadmaster proceeds to unload the cargo, usually with the Ramp Employees if they are stationed there.

In those instances in which a Loadmaster is unavailable, a Ramp Employee or Sorter will be assigned to accompany the freight on the aircraft.

IV.

At the central hub in Wilmington, the Ramp Manager supervises the work of the Loadmasters, Ramp Employees and Sorters. He is also responsible for the interviewing, hiring, and firing of these individuals. At the station, depending on the size of the city, a Hub Manager or Station Manager performs these duties.

Loadmasters, Ramp Employees (including Outbased Ramp Employees) and Sorters are on the same pay scale and receive the same fringe benefits. There is one master seniority list; however, the Carrier maintains separate seniority lists for Loadmasters, Ramp Employees, and Sorters, which are only used for bidding purposes in those classifications.

Loadmasters and Ramp Employees receive the same training in areas of securing cargo in the aircraft and the weighing and balancing of cargo. The two classifications perform identical paperwork, which is used to compute the actual weight and balance of the aircraft. Loadmasters, Ramp Employees, and Sorters receive the same training on the handling of hazardous materials. The Carrier does not require any special training for the Loadmasters or possession of special skills for employment.

Loadmasters, Ramp Employees and Sorters are required to maintain time records. In the case of Loadmasters, they are required to maintain their time in logs, whereas the Sorters and Ramp Employees use a sign-in sheet.

There has been considerable transfer between the positions of Loadmasters, Ramp Employees and Sorters. Within the last twelve months, there have been eleven transfers from Ramp Employee to Loadmaster, one transfer from Sorter to Loadmaster, and eight transfers from Loadmaster to Ramp Employee.

DISCUSSION

As the Board stated in Continental Airlines, Inc., 8 NMB Supp. A (1977), the factor of a work related community of interest shall be, and is, an important factor considered by the Board in determining whether a craft or class of employees exist in any case. A particular grouping of employees must possess a sufficiently distinct community of interest and common functional characteristics as to ensure their mutuality of interest in the objectives of collective bargaining.

The duties performed by fleet service personnel were outlined by the Board in its Memorandum re Airline Industry Hearings, 5 NMB 2 (1972), as follows:

1. Load and unload aircraft or baggage, express, freight, mail, company material, buffet and food supplies;
2. Deliver and pick up baggage and freight to and from baggage and freight areas;
3. Sort baggage and freight;
4. Operate and position ramp equipment and motorized ground equipment (vehicles);
5. Complete required paperwork directly associated with the movement of baggage, freight, buffet and food supplies;

Application of the above standards clearly shows that the Sorters, Ramp Employees, Outbased Ramp Employees, and Loadmasters perform fleet service functions.

Furthermore, the Board notes that the services performed by Airborne Express are very similar to those performed by fleet service employees, in Federal Express Corporation, 6 NMB No. 1032 (1978). Both Carriers utilize the hub system of operation in which all freight is transported to a central location, sorted, processed, and then loaded onto aircraft for shipment to their ultimate destinations. Although the employees in Federal Express, supra, have different job titles, their job functions are identical to those of the Sorters, Ramp

Employees and Loadmasters. In Federal Express, supra, the Board found that:

> The weight of the record clearly confirms the fleet service nature of the Hub operations which include such generally recognized fleet service functions as loading/unloading, sorting, movement of freight from ramp areas, use of ramp equipment, and preparation of documentation related to freight activities. Correspondingly, it is uncontested that the Cargo Handler employees perform demonstrated fleet service functions as a principal characteristic of their job duties. Although their specific operational details are different than the specialized sorting activities of the Hub, the Cargo Handlers' primary duties involve substantially identical basic functions including loading/unloading, sorting, freight movement, and freight volume documentation.

In Federal Express, supra, the Board found that those employees who perform such functions as loading/unloading, sorting, movement of freight from ramp areas, use of ramp equipment, and preparation of documentation related to freight activities have a substantial mutuality of interest so as to constitute a craft or class of Fleet Service Employees for the purposes of representation under the Railway Labor Act. The facts in the present case support a similar conclusion. The evidence shows that the Sorters, Ramp Employees (including those Outbased), and Loadmasters perform fleet service functions and share a substantial mutuality of interest so as to constitute a craft or class for the purposes of representation under the Act. Thus, the craft or class of Loadmaster sought by the IBT's application is an inappropriate craft or class.

CONCLUSION

Based on the facts and circumstances, it is determined that the Loadmasters of Airborne Express, Inc., do not constitute an identifiable and complete craft or class for representation purposes under

Section 2, Ninth, of the Railway Labor Act. The appropriate craft or class for purposes of representation is that of Fleet Service Employees encompassing the classifications of Sorters, Loadmasters and Ramp Employees including the Outbased Ramp Employees.

On the basis of the foregoing, the application of the International Brothehood of Teamsters is hereby dismissed.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwa

Copies to:

Mr. Dick Loy
Wilma Liebman, Esq.
Mr. Lawrence I. Byrnes
Robert W. Ashmore, Esq.

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 36

In the matter of the
REPRESENTATION OF EMPLOYEES
of
TAN AIRLINES
Flight Engineers

CASE NO. R-5274
DISMISSAL-LACK OF JURISDICTION
December 10, 1981

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO, on October 8, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Flight Engineers", employees of Tan Airlines.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative David M. Cohen to investigate.

FINDINGS

The investigation disclosed that all of the employees covered by the applications in Case Nos. R-5274, R-5275, and R-5276 are Honduran nationals (including two dual nationals of the United States and Honduras). Nine of the subject employees are permanently based in Honduras, and the remaining twenty-seven non-U.S. nationals, enter the United States under the provisions of 8 U.S.C. §1282, which permit alien crew members of an aircraft to enter the United States for a period not to exceed 29 days and on condition that they intend to depart on the same or another aircraft.

Honduras requires all flight crews be citizens of Honduras or another Central-American nation. The carrier's maintenance operations have recently been consolidated in Tegucigalpa, Honduras, which is the crew domicile as well.

Based upon the foregoing investigation, the Board finds that it does not have jurisdiction over the subject employees.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 37

In the matter of the	CASE NO. R-5275
REPRESENTATION OF EMPLOYEES	DISMISSAL-LACK OF JURISDICTION
of	December 10, 1981
TAN AIRLINES	
Flight Attendants	

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO, on October 8, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Flight Attendants" employees of Tan Airlines.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative David M. Cohen to investigate.

FINDINGS

The investigation disclosed that all of the employees covered by the applications in Case Nos. R-5274, R-5275, and R-5276 are Honduran nationals (including two dual nationals of the United States and Honduras). Nine of the subject employees are permanently based in Honduras, and the remaining twenty-seven non-U.S. nationals, enter the United States under the provisions of 8 U.S.C. §1282, which permit alien crew members of an aircraft to enter the United States for a period not to exceed 29 days and on condition that they intend to depart on the same or another aircraft.

Honduras requires all flight crews be citizens of Honduras or another Central-American nation. The carrier's maintenance operations have recently been consolidated in Tegucigalpa, Honduras, which is the crew domicile as well.

Based upon the foregoing investigation, the Board finds that it does not have jurisdiction over the subject employees.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 38

In the matter of the	CASE NO. R-5276
REPRESENTATION OF EMPLOYEES	DISMISSAL-LACK OF JURISDICTION
of	
TAN AIRLINES	December 10, 1981
Pilots & Co-Pilots	

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO, on October 8, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Pilots & Co-Pilots", employees of Tan Airlines.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative David M. Cohen to investigate.

FINDINGS

The investigation disclosed that all of the employees covered by the applications in Case Nos. R-5274, R-5275, and R-5276 are Honduran nationals (including two dual nationals of the United States and Honduras). Nine of the subject employees are permanently based in Honduras, and the remaining twenty-seven non-U.S. nationals, enter the United States under the provisions of 8 U.S.C. §1282, which permit alien crew members of an aircraft to enter the United States for a period not to exceed 29 days and on condition that they intend to depart on the same or another aircraft.

Honduras requires all flight crews be citizens of Honduras or another Central-American nation. The carrier's maintenance operations have recently been consolidated in Tegucigalpa, Honduras, which is the crew domicile as well.

Based upon the foregoing investigation, the Board finds that it does not have jurisdiction over the subject employees.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 39

In the matter of REPRESENTATION OF EMPLOYEES of LOUISVILLE & NASHVILLE RAILROAD COMPANY Inspectors	CASE NO. R-5286 (CR-5234) DISMISSAL December 14, 1981

The services of the National Mediation Board were invoked by the Brotherhood of Railway, Airline and Steamship Clerks-American Railway Supervisors Association Division (BRAC-ARSA), on September 21, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Inspectors", an accretion to the craft or class of Police Officers below the Rank of Captain, employees of the Louisville and Nashville Railroad Company.

At the time this application was received by the Board, these employees were not represented by any organization or individual. However, the craft or class of Police Officers below the Rank of Captain was represented by BRAC-ARSA pursuant to its certification in Case No. R-4889 (6 NMB No. 1175 (1979)).

The Board assigned Board Representative Charles A. Peacock to investigate.

FINDINGS

The investigation disclosed that Inspectors had been excluded from the craft or class of Police Officers Below the Rank of Captain in two previous cases on the L&N, based upon an examination of the duties and responsibilities of these personnel. NMB Case Nos. R-4626 and R-4889. In Case No. R-4889, both BRAC and ARSA, prior to their merger, were parties to the election, and neither protested the exclusion of

Inspectors from the election. Investigation further disclosed that the subject employees in the present case are the same group excluded in the prior elections.

BRAC-ARSA has failed to present any evidence in the instant case to show that the Inspectors are performing the duties of an employee or subordinate official within the meaning of the Railway Labor Act. On the basis of the findings detailed above, the application is dismissed subject to Part 1206.4 of the NMB Rules.

This matter initially was assigned File No. CR-5234 for identification purposes and subsequently was docketed as NMB Case No. R-5286.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 40

In the matter of the
REPRESENTATION OF EMPLOYEES
of
MARYLAND & PENNSYLVANIA RAILROAD COMPANY
Locomotive Engineers

CASE NO. R-5266
CERTIFICATION
December 15, 1981

The services of the National Mediation Board were invoked by the United Transportation Union (UTU), on September 15, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Locomotive Engineers", employees of the Maryland & Pennsylvania Railroad Company.

At the time this application was received, these employees were represented by R.L. Wise (an individual).

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Locomotive Engineers, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative David M. Cohen, who was assigned to count the ballots in this case.

Number of Employees Voting:

	UTU	Wise	Void Ballots	Number of Employees Eligible
Locomotive Engineers	5	0	1	6

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the United Transportation Union, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Locomotive Engineers, employees of the Maryland & Pennsylvania Railroad Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 41

In the matter of the
REPRESENTATION OF EMPLOYEES
of
MARYLAND & PENNSYLVANIA RAILROAD COMPANY
Conductors

CASE NO. R-5267
CERTIFICATION
December 15, 1981

The services of the National Mediation Board were invoked by the United Transportation Union (UTU), on September 15, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Conductors" employees of the Maryland & Pennsylvania Railroad Company.

At the time this application was received, these employees were represented by R.L. Wise (an individual).

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Conductors and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative David M. Cohen, who was assigned to count the ballots in this case.

Number of Employees Voting:

	UTU	Wise	Number of Employees Eligible
Conductors	2	0	2

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the United Transportation Union, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Conductors employees of the Maryland & Pennsylvania Railroad Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 42

In the matter of the	CASE NO. R-5268
REPRESENTATION OF EMPLOYEES	CERTIFICATION
of	December 15, 1981
MARYLAND & PENNSYLVANIA RAILROAD COMPANY	
Brakemen	

The services of the National Mediation Board were invoked by the United Transportation Union (UTU), on September 15, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Brakemen", employees of the Maryland & Pennsylvania Railroad Company.

At the time this application was received, these employees were represented by R.L. Wise (an individual).

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Brakemen and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative David M. Cohen, who was assigned to count the ballots in this case.

Number of Employees Voting:

	UTU	Wise	Number of Employees Eligible
Brakemen	11	0	11

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the United Transportation Union, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Brakemen, employees of the Maryland & Pennsylvania Railroad Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 43

In the matter of the
REPRESENTATION OF EMPLOYEES
of
MARYLAND & PENNSYLVANIA RAILROAD COMPANY
Dispatchers

CASE NO. R-5269
DISMISSAL
December 15, 1981

The services of the National Mediation Board were invoked by the United Transportation Union (UTU), on September 15, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Dispatchers" employees of the Maryland & Pennsylvania Railroad Company.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Dispatchers and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative David M. Cohen, who was assigned to count the ballots in this case.

Number of Employees Voting:

	UTU	Void Ballots	Number of Employees Eligible
Dispatchers	0	1	2

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 44

December 16, 1981

Joseph Z. Fleming, Esq.
Fleming & Huck
25 Southeast Second Avenue
Miami, FL 33131

Re: Air Florida Request for NMB Ruling;
NMB Case Nos. R-5225, R-5230

Dear Mr. Fleming:

This is in response to your telegram dated December 14, 1981. Said telegram alleges that the Air Line Employees Association, International has withdrawn its applications before the Board and, therefore, that the Board should dismiss those applications.

The Board is not aware of any facts or circumstances, including Mr. Johnson's December 8, 1981 letter, which could even arguably lead to the conclusion that the ALEA has withdrawn its applications involving Air Florida currently pending before the NMB (Case Nos. R-5225 and R-5230). In response to the Board's inquiry, Mr. Johnson, by his telex of December 15, 1981, stated that the "ALEA has not withdrawn, and does not intend to withdraw" the R-5225 and R-5230 applications. Mr. Johnson further confirmed the ALEA's consistent position that the "illegal coercive tactics" and "defiance of NMB Directives" by Air Florida "has caused and is causing irreparable harm to its employees and their right to a free expression of choice of representation."

Under all the circumstances, there is no possible basis to justify dismissing the ALEA's applications in R-5225 and R-5230. Accordingly, your request is denied. For the record, the Board is not bound by your asserted December 15, 1981 "deadline".

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Wyatt Johnson, Esq.
George H. Tucker, Esq.
United States Department of Justice

(Also sent as telegram on December 16, 1981)

RKQ/rec

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 45

In the matter of the
REPRESENTATION OF EMPLOYEES
of
TERMINAL RAILWAY ALABAMA
STATE DOCKS
Machinists

CASE NO. R-5279
CERTIFICATION
December 15, 1981

The National Mediation Board conducted an election pursuant to Section 2, Ninth, of the Railway Labor Act 45 U.S.C. to determine who may represent the craft or class of Machinists employees of the Terminal Railway Alabama State Docks. Said election was conducted pursuant to the Board's Findings Upon Investigation, 9 NMB No. 16 (1981).

At the time the election was conducted the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW) was the certified representative of the craft or class pursuant to the Board's Certification in Case No.R-1906 (1947). For some period of time beginning in 1950 the Brotherhood Railway Carmen of the U.S. & Canada (BRC) represented the craft or class pursuant to an agreement between that organization and the International Association of Machinists and Aerospace Workers, AFL-CIO.

The Board assigned Board Representative David M. Cohen to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Machinists, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Cohen, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IAM&AW	BRC	Number of Employees Eligible
Machinists	4	1	6

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Association of Machinists and Aerospace Workers, AFL-CIO, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Machinists, employees of the Terminal Railway Alabama State Docks, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 46

In the matter of the : CASE NO. R-5270
REPRESENTATION OF EMPLOYEES : DISMISSAL-INSUFFICIENT SHOWING OF INTEREST
of :
LONG ISLAND RAIL ROAD COMPANY : December 16, 1981
Maintenance of Way Employees :

The services of the National Mediation Board were invoked by the Brotherhood of Track & B&B Employees of America, on October 2, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Maintenance of Way Employees", employees of the Long Island Rail Road Company.

At the time this application was received by the Board, these employees were represented by the International Brotherhood of Teamsters.

The Board assigned Board Representative Francis J. Dooley to investigation.

FINDINGS

The Board Representative's investigation established that the organization had failed to support its application with the required number of authorizations from the employees in the craft or class as set forth in Part 1206.2(b) of the National Mediation Board Rules.

Therefore, the Board finds no basis upon which to proceed in this matter and the application is hereby dismissed subject to Part 1206.4 of the NMB's Rules.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 47

December 17, 1981

Mr. Willie L. Clark, Jr.
Solicitor
National Labor Relations Board
Washington, DC 20570

Re: Elliott Flying Service, Inc.
NMB File No. CJ-5264
(NLRB Case No. 18-RC-13149)

Dear Mr. Clark:

This is in response to your request for the opinion of the National Mediation Board regarding whether the above-captioned company is subject to the Railway Labor Act, 45 U.S.C. §151 et seq., pursuant to Title II of the Act.

We understand from the materials provided that Elliott Flying Service, Inc. (EFS), is certificated by the Federal Aviation Administration as an air taxi and commercial operator under Part 135 of the Federal Aviation Regulations. EFS engages in interstate common carriage with respect to charter operations, and also holds contracts with the Military Traffic Management Command, Department of the Army, to provide chartered air taxi service for the Department of Defense. EFS is certificated for the Continental United States, and is seeking authority to operate to Canada. In addition, EFS provides fueling and emergency aircraft maintenance service at Des Moines, Iowa, for Boeing 737 aircraft operated by Frontier Airlines, a common carrier by air under Title II of the Railway Labor Act.

EFS does not carry U.S. Mail, and does not interline with other common carriers by air. In addition to its air taxi and commercial operations, EFS also engages in sales and servicing of Beechcraft aircraft, and provides pilots for owners of small aircraft on a charter basis. Sales and servicing constitute approximately half of EFS' gross receipts.

The facts recited in the second paragraph above establish that EFS is engaged in common carriage by air in interstate commerce within the meaning of Title II of the Railway Labor Act. The Board is of the opinion that EFS is subject to the provisions of the Railway Labor Act.

The documents forwarded by your letter of December 10, 1981, are enclosed. This finding may be cited as Elliott Flying Service, Inc., 9 NMB No. 47 (1981).

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr
Executive Secretary

RKQ/dcb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 48

In the matter of the
REPRESENTATION OF EMPLOYEES
of
BIG SKY AIRLINES
Dispatchers

CASE NO. R-5282

DISMISSAL-WITHDRAWN
DURING INVESTIGATION

December 22, 1981

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters, on November 9, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Dispatchers", employees of Big Sky Airlines.

At the time this application was received by the Board, the carrier did not employ any personnel in that craft or class.

Subsequently, the International Brotherhood of Teamsters, filed a letter with the National Mediation Board dated December 16, 1981, withdrawing the application of that organization for the services of the Board in this matter.

On the basis of the letter of withdrawal referred to above, the National Mediation Board hereby dismisses the application and closes its files in Case No. R-5282 subject to Part 1206.4 of the NMB Rules.

By direction of the NATIONAL MEDIATION BOARD

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 49

In the matter of the
REPRESENTATION OF EMPLOYEES
of
NORTHEAST ILLINOIS REGIONAL
COMMUTER RAILROAD CORP.
Locomotive Firemen

CASE NO. R-5280
CERTIFICATION
December 23, 1981

The services of the National Mediation Board were invoked by the Brotherhood of Locomotive Engineers (BLE), on October 20, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Locomotive Firemen", employees of the Northeast Illinois Regional Commuter Railroad Corp.

At the time this application was received, these employees were represented by the United Transportation Union (UTU). By telex of December 16, 1981, Mr. Fred A. Hardin, President of the UTU, notified the Board that "The UTU is no longer interested in representing these employees."

The Board assigned Board Representative Robert B. Martin to investigate.

FINDINGS

The investigation disclosed that a majority of eligible employees in the craft or class had signed authorization cards which authorized the BLE to represent them for purposes of the Railway Labor Act.

The investigation further disclosed that the Carrier did not object to representation of the craft or class by the BLE.

The following is the result of the Check of Validity of the employees' signatures as reported by Board Representative Robert B. Martin:

Number of Employees Signing Authorizations:

	BLE	Number of Employees Eligible
Locomotive Firemen	32	32

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Brotherhood of Locomotive Engineers, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Locomotive Firemen, employees of the Northeast Illinois Regional Commuter Railroad Corp., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 50
December 23, 1981

Wilma B. Liebman, Esq.
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, DC 20001

Re: Airborne Express, Inc.
NMB Case No. R-5260

Dear Ms. Liebman:

This letter is to acknowledge your request of December 18, 1981, that the National Mediation Board supplement its decision in *Airborne Express, Inc.*, 9 NMB No. 35, in which the Board found that the appropriate craft or class was that of Fleet Service Employees and dismissed the application filed by the International Brotherhood of Teamsters (IBT). You request that the decision be supplemented to specifically indicate that the dismissal was without prejudice under the Board's one year bar rule contained in 29 C.F.R. §1206.4.

The pertinent section states that, except under unusual or extraordinary circumstances, the Board will not accept an application for investigation of a representation dispute among employees for a period of one year from the date on which:

> (1) The Board dismissed a docketed application after having conducted an election among the same *craft or class* of employees on the same carrier and less than a majority of eligible voters participated in the election; or
>
> (2) The Board dismissed a docketed application covering the same *craft or class* of employees on the same carrier because no dispute existed as defined in §1206.8 of these Rules; or

> (3) The Board dismissed a docketed application after the applicant withdrew an application covering the same *craft or class* of employees on the same carrer *after the* application was docketed by the Board. [Emphasis supplied]

Your attention is directed to the fact that the IBT application was dismissed because the Board found that the Loadmasters did not constitute an appropriate craft or class for representation purposes under the Railway Labor Act. An application dismissed because it is found not to encompass an appropriate craft or class is not subject to the bar contained in 29 C.F.R. §1206.4. Thus, the one year bar rule was not applicable in *Airborne Express, Inc.*, *supra*.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. Norman Greene
Mr. Lawrence I. Brynes
Robert W. Ashmore, Esq.

RKQ/rwa

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 51
January 11, 1982

Clifford P. Chaiet, Esq.
Counsel for Mercury Services, Inc.
Portnoy, Messinger, Pearl &
Associates, Inc.
350 Jericho Turnpike
Jericho, NY 11753

Re: Mercury Services, Inc.
NMB Case Nos. R-5250 and R-5251

Dear Mr. Chaiet:

This will acknowledge receipt of your letter of December 23, 1981, requesting that the Board reconsider its decision in Mercury Services, Inc., 9 NMB No. 34 (1981), in which the Board found in R-5251, a craft or class of Mechanics and Related Employees of Mercury Services, Inc., (Mercury Services) a proper craft or class for representation purposes. Specifically, the request asserts that those individuals employed by Mercury Refueling, Inc., (Mercury Refueling) as Fueling and Fueling Maintenance Employees should be included in the craft or class of Mechanics and Related Employees of Mercury Services. The Carrier also requests that the eligibility dates in both cases be changed to include those individuals hired by the Carrier since the issuance of the decision.

The Board has considered the Carrier's request regarding the inclusion of Fueling and Fueling Maintenance Employees of Mercury Refueling and finds that insufficient evidence has been presented to warrant reversal of the previous decision. As the Board stated in its decision, "Mercury Services, Mercury Refueling, Crew Transit and Reno Flying are separate companies and each must meet the standards of the Act for the Act to apply to its operations. The appropriate crafts or classes in the present cases should thus consist of only the employees of Mercury Services."

On December 14, 1981, the Board found disputes to exist in R-5250 and R-5251 among Fleet Service Employees and Mechanics and Related Employees, respectively, employees of Mercury Services. All-mail ballot elections were authorized using a cut-off date of August 9, 1981. Section 3.503-5 of the Representation Manual states the following in regards to the eligibility date:

> The list of potential eligible voters should contain all individuals with employee-employer relationships as of the last day of the last payroll period prior to the Board Representative's arrival on the property...

In the present cases, investigation on the property was commenced on August 18, 1981. Thus, the appropriate eligibility date is the payroll date immediately prior to August 18th, which is August 9, 1981. This eligibility date was set in accordance with Board policy and rules. Subsequent delays in the investigation of an application do not change the eligibility date. Air Canada, 7 NMB No. 40 (1978) 478 F. Supp. 615 (S.D. N.Y. 1979), 107 LRRM 2028 (S.D. N.Y. 1980), aff'd w/o op. 107 LRRM 2049 (2nd Cir. 1981), cert. denied, 108 LRRM 2923; British Airways, 7 NMB No. 237 (1980).

Thus, for the reasons stated above, the Carrier's request for a reconsideration of the Board's decision in Mercury Services, Inc., supra, and a change in the eligibility date is hereby denied.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwa

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 52

In the Matter of the
Application of

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
AFL-CIO

alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act

involving employees of

AEROVIAS VENEZOLANAS (AVENSA)

CASE NO. R-5175

ORDER TO SHOW
CAUSE

January 11,1982

On December 30, 1980, the International Association of Machinists and Aerospace Workers, AFL-CIO filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving "Office Clerical Employees" of Aerovias Venezolanas, S.A. (Avensa). Said application has been docketed as NMB Case No. R-5175.

At the time the application was filed, these employees were not represented by any organization or individual.

The Board assigned Board Representative Charles H. Callahan to investigate. During the course of the investigation, issues arose concerning whether Avensa had any Office Clerical Employees for purposes of this case.

ISSUE

The issue presented is whether the subject employees are employed by Avensa, or whether they are employed by Venezolana International Airways (Viasa).

DISCUSSION

Investigation indicates that the subject employees are covered by Viasa's insurance and benefits, and are on Viasa's payroll.

The craft or class of Office, Clerical, Fleet and Passenger Service Employees on Viasa is represented by IAM&AW pursuant to the Board's Certification in NMB Case No. R-4052 (1969).

ORDER

Based upon the foregoing, it is hereby ordered that IAM&AW, AVENSA, and VIASA, show cause on or before February 1, 1982, why the National Mediation Board should not deem the subject employees to be employees of Viasa within the certification in Case No. R-4052.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. W. W. Winpisinger
Mr. William Scheri
Mr. Oscar Bustillo
Mr. Henry L. Boulton
Mr. Charles H. Callahan

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 53

In the Matter of the
Application of the

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
AFL-CIO

alleging a representation dispute pursuant to the Railway
Labor Act

involving

WESTAIR COMMUTER AIRLINES

CASE NO. R-5281

DETERMINATION OF
ELIGIBILITY

January 12, 1982

On November 18, 1981, the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW), filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving Mechanics and Related Employees, employed by Westair Commuter Airlines, Inc. (Westair). Said application has been docketed as NMB Case No. R-5281.

At the time the application was received, these employees were not represented by any organization or individual.

During the course of the Board's investigation, issues arose concerning the eligibility of two persons to vote. On December 23, 1981, the Board found a dispute to exist and authorized an all-mail ballot election. Ballots are scheduled to be counted on January 25, 1982.

ISSUES

The issue in this case is whether D. Kensinger and J. Kelly are eligible to vote in this election.

CONTENTIONS

Westair contends that Kensinger is ineligible to vote because he has been terminated. IAM&AW contends that he has been furloughed.

IAM&AW contends that Kelly is not an "employee or subordinate official" within the meaning of the Act.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 152. Accordingly, the Board finds as follows:

I.

Section 201 of the Act, extends all of the provisions of Title I of the Act, except the provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce...and every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service." (emphasis added)

II.

Westair Commuter Airlines, Inc. is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181.

III.

Section 2, Fourth, of the Act, 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

IV.

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V.

IAM&AW is a labor organization and representative as defined in Section 1, sixth, 45 U.S.C. §151, Sixth, and Section 2, Ninth, 45 U.S.C. §152, Ninth, of the Act.

FINDINGS OF FACT

I.

D. Kensinger was employed by Westair as a cleanerhelper until October 15, 1981. Because Westair eliminated that position, and instituted a policy of having only licensed mechanics employed in the Maintenance Department, Kensinger was terminated for failure to possess those licenses. His termination letter includes no mention of furlough or of possible recall.

No grievance or other complaint seeking reinstatement is pending.

II.

J. Kelly is employed by Westair as Chief Inspector. Investigation discloses that Kelly spends 20 percent of his time as a mechanic, 50-60 percent as an inspector, and 20-30 percent as a working supervisor or record keeper. He does not have the authority to hire or discharge employees, or to call overtime.

The duties of the Chief Inspector are to keep current all information and reports regarding maintenance, record weight and balance, maintain maintenance manuals, maintain liason with the Federal Aviation Administration, maintain all inspection records, check all tools, insure compliance with airworthiness standards, establish a mechanic training program, maintain engine records, and identify airworthy and defective components.

DISCUSSION

I.

Section 1206.6 of the Board's Rules, 29 CFR Part 1206, provides:

> §1206.6 Eligibility of dismissed employees to vote.
>
> Dismissed employees whose requests for reinstatement account of wrongful dismissal are pending before proper authorities, which includes the National Railroad Adjustment Board or other appropriate adjustment board, are eligible to participate in elections among the craft or class of employees in which they are employed at time of dismissal. This does not include dismissed employees whose guilt has been determined, and who are seeking reinstatement on a leniency basis.

Section 5.304 and 5.305 of the Board's Representation Manual further provides:

> 5.304 Discharged Employees
>
> Ordinarily, discharged or terminated employees shall not be considered eligible unless the discharge is being appealed through the applicable grievance procedure or an action for reinstatement has been filed before a court of competent jurisdiction. An individual shall not be considered eligible if the grievance or court action has been finally

> acted upon and the discharge has been upheld prior to the count of ballots (see NMB Rules, Part 1206.6).
>
> 5.305 Furloughed Employees
>
> Furloughed employees are considered eligible in the craft or class in which they last worked provided they retain an employer-employee relationship and have a reasonable expectation of returning to work.

The evidence respecting Kensinger indicates that he has been terminated, not furloughed, and that he has no pending appeal for reinstatement. D. Kensinger is therefore ineligible to participate in this election.

The evidence respecting Kelly indicates that supervisory duties are a minor part of his job, and are not included within his job description. The overwhelming part of his time is spent as a mechanic or inspector, and there is no indication that he acts as more than a lead during the balance of his time. Under these conditions, J. Kelly is eligible to participate in this election.

CONCLUSION

D. Kensinger is ineligible and shall be removed from the list of eligible voters. J. Kelly is eligible to vote.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. Parlen McKenna
Leslie A. Nicholson, Jr., Esq.
Mr. W. W. Winpisinger
Mr. William Scheri

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 54

In the matter of the
REPRESENTATION OF EMPLOYEES
of
ROSS AVIATION
Pilots

CASE NO. R-4231
(FILE NO. CR-5279)

AMENDED
CERTIFICATION

January 19, 1982

On January 4, 1982, a joint request by the Air Line Pilots Association (ALPA) and the Union of Professional Airmen (UPA) was made to the National Mediation Board to effect a transfer of the present certification issued to the Union of Professional Airmen in NMB Case No. R-4231 covering the craft or class of Pilots, employees of Ross Aviation to the Air Line Pilots Association.

This request was made as a result of a resolution from the UPA Board of Directors' Meeting on June 4 and 5, 1981; a resolution from the ALPA Executive Committee on September 16 and 17, 1981; a resolution from the ALPA Executive Board on November 10, 11 and 12, 1981; and results of the Mail Ballot of the ALPA Board of Directors counted on December 11, 1981.

FINDINGS

The request for the transfer of the certification covering the craft or class of Pilots, employees of Ross Aviation was assigned NMB File No. CR-5279 and assigned to Board Representative Robert B. Martin for investigation and verification of signatures on the consent cards.

At the time the request was received the employees were represented by the UPA and no organization other than the ALPA had made any claim to representation.

The following is the result of the check of consent cards as reported by Board Representative Martin on January 19, 1982:

Results of Check of Authorization:

	Consenting to the transfer of certification from UPA to the ALPA	Number of Employees Eligible
Pilots	20	26

CERTIFICATION

NOW, THEREFORE, in accordance with the procedure set forth above and based upon its investigation pursuant thereto, the National Mediation Board hereby transfers the certification issued to the Union of Professional Airmen in NMB Case No. R-4231 to the Air Line Pilots Association and certifies that the Air Line Pilots Association has been duly designated and authorized to represent for the purposes of the Railway Labor Act, the craft or class of Pilots, employees of Ross Aviation, its successors and assigns. This transfer of certification is issued without bar to any future representation proceeding involving these employees.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 55

In the matter of the
REPRESENTATION OF EMPLOYEES
of
AIR NORTH
Pilots

CASE NO. R-4867
(FILE NO. CR-5273)

AMENDED
CERTIFICATION

January 19, 1982

On December 29, 1981, a joint request by the Air Line Pilots Association (ALPA) and the Union of Professional Airmen (UPA) was made to the National Mediation Board to effect a transfer of the present certification issued to the Union of Professional Airmen in NMB Case No. R-4867 covering the craft or class of Pilots, employees of Air North, to the Air Line Pilots Association.

This request was made as a result of a resolution from the UPA Board of Directors' Meeting on June 4 and 5, 1981; a resolution from the ALPA Executive Committee on September 16 and 17, 1981; a resolution from the ALPA Executive Board on November 10, 11 and 12, 1981; and results of the Mail Ballot of the ALPA Board of Directors counted on December 11, 1981.

FINDINGS

The request for the transfer of the certification covering the craft or class of Pilots, employees of Air North was assigned NMB File No. CR-5273 and assigned to Board Representative Ralph T. Colliander for investigation and verification of signatures on the consent cards.

At the time the request was received the employees were represented by the UPA and no organization other than the ALPA had made any claim to representation.

The following is the result of the check of consent cards as reported by Board Representative Collianderon January 15, 1982:

Results of Check of Authorization:

	Consenting to the transfer of certification from UPA to the ALPA	Number of Employees Eligible
Pilots	42	45

CERTIFICATION

NOW, THEREFORE, in accordance with the procedure set forth above and based upon its investigation pursuant thereto, the National Mediation Board hereby transfers the certification issued to the Union of Professional Airmen in NMB Case No. R-4867 to the Air Line Pilots Association and certifies that the Air Line Pilots Association has been duly designated and authorized to represent for the purposes of the Railway Labor Act, the craft or class of Pilots, employees of Air North, its successors and assigns. This transfer of certification is issued without bar to any future representation proceeding involving these employees.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

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NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 56
January 20, 1982

Mr. R. I. Kilroy, Int'l President
Brotherhood of Railway, Airline
and Steamship Clerks
3 Research Place
Rockville, MD 20850

Thomas G. Greaves, III, Esq.
Haynsworth, Baldwin, Miles Johnson,
Greaves and Edwards
P. O. Box 10005
Greenville, SC 29603-0005

Re: NMB Case No. R-5265 Delpro/BRAC-ARSA

Gentlemen:

This will acknowledge receipt of Mr. Kilroy's protest of November 20, 1981, and supporting material of December 18, 1981, and Mr. Greaves' response thereto of January 11, 1982. A copy of Mr. Greaves' response is enclosed for Mr. Kilroy.

Based upon the Board's preliminary review, it is our determination that the election authorized on November 20, 1981, should proceed at this time. However, the Board will monitor the conduct of the election, and BRAC should report any allegations of carrier interference which arise. At the conclusion of the voting period, the Board will consider such further action as may be required in this case.

By direction of the NATIONAL MEDIATION BOARD

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. Frank Ferlin
Mr. Gerald Okada

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 57

In the matter of the
REPRESENTATION OF EMPLOYEES
of
ASPEN AIRWAYS
Pilots

CASE NO. R-4745
(FILE NO. CR-5276)

AMENDED
CERTIFICATION

January 25, 1982

On December 29, 1981, a joint request by the Air Line Pilots Association (ALPA) and the Union of Professional Airmen (UPA) was made to the National Mediation Board to effect a transfer of the present certification issued to the Union of Professional Airmen in NMB Case No. R-4745 covering the craft or class of Pilots, employees of Aspen Airways to the Air Line Pilots Association.

This request was made as a result of a resolution from the UPA Board of Directors' Meeting on June 4 and 5, 1981; a resolution from the ALPA Executive Committee on September 16 and 17, 1981; a resolution from the ALPA Executive Board on November 10, 11 and 12, 1981; and results of the Mail Ballot of the ALPA Board of Directors counted on December 11, 1981.

FINDINGS

The request for the transfer of the certification covering the craft or class of Pilots, employees of Aspen Airways was assigned NMB File No. CR-5276 and assigned to Board Representative Robert B. Martin for investigation and verification of signatures on the consent cards.

At the time the request was received the employees were represented by the UPA and no organization other than the ALPA had made any claim to representation.

The following is the result of the check of consent cards as reported by Board Representative Martin on January 22, 1982:

Results of Check of Authorization:

	Consenting to the transfer of certification from UPA to the ALPA	Number of Employees Eligible
Pilots	30	36

CERTIFICATION

NOW, THEREFORE, in accordance with the procedure set forth above and based upon its investigation pursuant thereto, the National Mediation Board hereby transfers the certification issued to the Union of Professional Airmen in NMB Case No. R-4745 to the Air Line Pilots Association and certifies that the Air Line Pilots Association has been duly designated and authorized to represent for the purposes of the Railway Labor Act, the craft or class of Pilots, employees of Aspen Airways its successors and assigns. This transfer of certification is issued without bar to any future representation proceeding involving these employees.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 58
January 25, 1982

Charles E. Murphy, Esq.
Vedder, Price, Kaufman & Kammholz
115 South La Salle Street
Chicago, IL 60603

Re: NMB Case No. R-5278
International In-Flight Catering/IAM

Dear Mr. Murphy:

This will acknowledge receipt of your letter of January 19, 1982, protesting the eligibility of Chris Graham and Lonnie T. Luce to vote in the above-referenced case.

Board representative Charles R. Barnes ruled that each of these employees was eligible to vote on the basis of Section 1206.6 of the Board's Rules, 29 C.F.R. Part 1206, which provides in pertinent part that "Dismissed employees whose requests for reinstatement account of wrongful dismissal are pending before proper authorities...are eligible to participate in elections among the craft or class of employees in which they are employed at time of dismissal." Additionally, Section 5.304 of the Representation Manual specifically provides that employees seeking reinstatement in an action before a court of competent jurisdiction are eligible.

The Board notes that your appeal is specifically directed at the "propriety" of the Board's Rules, and that you state that the Board representative's ruling "is consistent with the Board's Rules as published." The challenged section of the Board's Rules has been the subject of extensive litigation, and has been judicially affirmed. *Air Canada v NMB*, 478 F. Supp. 615 (S.D. N.Y. 1979), 107 LRRM 2028 (S.D.N.Y. 1980), aff'd w/o op. 107 LRRM 2049 (2nd Cir. 1981), cert. denied 108 LRRM 2923 (1981). The Board therefore concludes that your appeal provides no basis for further action.

Since Chris Graham has a pending action for reinstatement in a court of competent jurisdiction, he is an eligible voter. However, Lonnie T. Luce is not eligible, since he has no pending action for reinstatement.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. Fusao Ogoshi
Mr. William Scheri
Mr. Charles R. Barnes

RKQ/dca

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 59

In the matter of the REPRESENTATION OF EMPLOYEES of AIR WISCONSIN Pilots	CASE NO. R-4765 (FILE NO. CR-5274) AMENDED CERTIFICATION January 25, 1982

On December 29, 1981, a joint request by the Air Line Pilots Association (ALPA) and the Union of Professional Airmen (UPA) was made to the National Mediation Board to effect a transfer of the present certification issued to the Union of Professional Airmen in NMB Case No. R-4765 covering the craft or class of Pilots, employees of Air Wisconsin to the Air Line Pilots Association.

This request was made as a result of a resolution from the UPA Board of Directors' Meeting on June 4 and 5, 1981; a resolution from the ALPA Executive Committee on September 16 and 17, 1981; a resolution from the ALPA Executive Board on November 10, 11 and 12, 1981; and results of the Mail Ballot of the ALPA Board of Directors counted on December 11, 1981.

FINDINGS

The request for the transfer of the certification covering the craft or class of Pilots, employees of Air Wisconsin was assigned NMB File No. CR-5274 and assigned to Board Representative Joseph E. Anderson for investigation and verification of signatures on the consent cards.

At the time the request was received the employees were represented by the UPA and no organization other than the ALPA had made any claim to representation.

The following is the result of the check of consent cards as reported by Board Representative Anderson on January 19, 1982:

Results of Check of Authorization:

	Consenting to the transfer of certification from UPA to the ALPA	Number of Employees Eligible
Pilots	97	114

CERTIFICATION

NOW, THEREFORE, in accordance with the procedure set forth above and based upon its investigation pursuant thereto, the National Mediation Board hereby transfers the certification issued to the Union of Professional Airmen in NMB Case No. R-4765 to the Air Line Pilots Association and certifies that the Air Line Pilots Association has been duly designated and authorized to represent for the purposes of the Railway Labor Act, the craft or class of Pilots, employees of Air Wisconsin its successors and assigns. This transfer of certification is issued without bar to any future representation proceeding involving these employees.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 60

In the matter of the	CASE NO. R-4519 (FILE NO. CR-5277)
REPRESENTATION OF EMPLOYEES	
of	AMENDED CERTIFICATION
POCONO AIRLINES	January 25, 1982
Pilots	

On December 29, 1981, a joint request by the Air Line Pilots Association (ALPA) and the Union of Professional Airmen (UPA) was made to the National Mediation Board to effect a transfer of the present certification issued to the Union of Professional Airmen in NMB Case No. R-4519 covering the craft or class of Pilots, employees of Pocono Airlines to the Air Line Pilots Association.

This request was made as a result of a resolution from the UPA Board of Directors' Meeting on June 4 and 5, 1981; a resolution from the ALPA Executive Committee on September 16 and 17, 1981; a resolution from the ALPA Executive Board on November 10, 11 and 12, 1981; and results of the Mail Ballot of the ALPA Board of Directors counted on December 11, 1981.

FINDINGS

The request for the transfer of the certification covering the craft or class of Pilots, employees of Pocono Airlines was assigned NMB File No. CR-5277 and assigned to Board Representative Laurette Piculin for investigation and verification of signatures on the consent cards.

At the time the request was received the employees were represented by the UPA and no organization other than the ALPA had made any claim to representation.

The following is the result of the check of consent cards as reported by Board Representative Piculin on January 22, 1982:

Results of Check of Authorization:

	Consenting to the transfer of certification from UPA to the ALPA	Number of Employees Eligible
Pilots	17	24

CERTIFICATION

NOW, THEREFORE, in accordance with the procedure set forth above and based upon its investigation pursuant thereto, the National Mediation Board hereby transfers the certification issued to the Union of Professional Airmen in NMB Case No. R-4519 to the Air Line Pilots Association and certifies that the Air Line Pilots Association has been duly designated and authorized to represent for the purposes of the Railway Labor Act, the craft or class of Pilots, employees of Pocono Airlines its successors and assigns. This transfer of certification is issued without bar to any future representation proceeding involving these employees.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 61

In the matter of the
REPRESENTATION OF EMPLOYEES
of
ALTAIR AIRLINES
Pilots

CASE NO. R-4188
(FILE NO. CR-5275)

AMENDED
CERTIFICATION

January 25, 1982

On December 29, 1981, a joint request by the Air Line Pilots Association (ALPA) and the Union of Professional Airmen (UPA) was made to the National Mediation Board to effect a transfer of the present certification issued to the Union of Professional Airmen in NMB Case No. R-4188 covering the craft or class of Pilots, employees of Altair Airlines to the Air Line Pilots Association.

This request was made as a result of a resolution from the UPA Board of Directors' Meeting on June 4 and 5, 1981; a resolution from the ALPA Executive Committee on September 16 and 17, 1981; a resolution from the ALPA Executive Board on November 10, 11 and 12, 1981; and results of the Mail Ballot of the ALPA Board of Directors counted on December 11, 1981.

FINDINGS

The request for the transfer of the certification covering the craft or class of Pilots, employees of Altair Airlines was assigned NMB File No. CR-5275 and assigned to Board Representative Laurette Piculin for investigation and verification of signatures on the consent cards.

At the time the request was received the employees were represented by the UPA and no organization other than the ALPA had made any claim to representation.

The following is the result of the check of consent cards as reported by Board Representative Piculin on January 22, 1982:

Results of Check of Authorization:

	Consenting to the transfer of certification from UPA to the ALPA	Number of Employees Eligible
Pilots	58	85

CERTIFICATION

NOW, THEREFORE, in accordance with the procedure set forth above and based upon its investigation pursuant thereto, the National Mediation Board hereby transfers the certification issued to the Union of Professional Airmen in NMB Case No. R-4188 to the Air Line Pilots Association and certifies that the Air Line Pilots Association has been duly designated and authorized to represent for the purposes of the Railway Labor Act, the craft or class of Pilots, employees of Altair Airlines its successors and assigns. This transfer of certification is issued without bar to any future representation proceeding involving these employees.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

	9 NMB No. 62
In the matter of the	CASE NO. R-4092 (FILE NO. CR-5278)
REPRESENTATION OF EMPLOYEES	
of	AMENDED CERTIFICATION
SUBURBAN AIRLINES	January 25, 1982
Pilots	

On December 29, 1981, a joint request by the Air Line Pilots Association (ALPA) and the Union of Professional Airmen (UPA) was made to the National Mediation Board to effect a transfer of the present certification issued to the Union of Professional Airmen in NMB Case No. R-4092 covering the craft or class of Pilots, employees of Suburban Airlines to the Air Line Pilots Association.

This request was made as a result of a resolution from the UPA Board of Directors' Meeting on June 4 and 5, 1981; a resolution from the ALPA Executive Committee on September 16 and 17, 1981; a resolution from the ALPA Executive Board on November 10, 11 and 12, 1981; and results of the Mail Ballot of the ALPA Board of Directors counted on December 11, 1981.

FINDINGS

The request for the transfer of the certification covering the craft or class of Pilots, employees of Suburban Airlines was assigned NMB File No. CR-5278 and assigned to Board Representative Laurette Piculin for investigation and verification of signatures on the consent cards.

At the time the request was received the employees were represented by the UPA and no organization other than the ALPA had made any claim to representation.

The following is the result of the check of consent cards as reported by Board Representative Piculin on January 22, 1982:

Results of Check of Authorization:

	Consenting to the transfer of certification from UPA to the ALPA	Number of Employees Eligible
Pilots	30	34

CERTIFICATION

NOW, THEREFORE, in accordance with the procedure set forth above and based upon its investigation pursuant thereto, the National Mediation Board hereby transfers the certification issued to the Union of Professional Airmen in NMB Case No. R-4092 to the Air Line Pilots Association and certifies that the Air Line Pilots Association has been duly designated and authorized to represent for the purposes of the Railway Labor Act, the craft or class of Pilots, employees of Suburban Airlines its successors and assigns. This transfer of certification is issued without bar to any future representation proceeding involving these employees.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 63

In the matter of the	CASE NO. R-5281
REPRESENTATION OF EMPLOYEES	DISMISSAL
of	January 25, 1982
WESTAIR COMMUTER AIRLINES, INC	
Mechanics & Related Employees	

The services of the National Mediation Board were invoked by the International Association of Machinists & Aerospace Workers, AFL-CIO (IAM&AW), on November 18, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Mechanics & Related Employees", employees of Westair Commuter Airlines, Inc.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Joseph W. Smith to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Mechanics & Related Employees, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative David M. Cohen, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IAM&AW	Number of Employees Eligible
Mechanics & Related Employees	6	14

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 64

January 27, 1982

John-Edward Alley, Esq.
Alley and Alley
205 Brush Street
Post Office Box 1427
Tampa, FL 33601

Re: NMB Case Nos. R-5225 and R-5230

Dear Mr. Alley:

This will acknowledge receipt of your letter of January 22, 1982, regarding the Board's letter to you of January 19, 1982, in connection with the above-referenced cases. Specifically, the Negotiating Committee of Airport and Ramp Service Agents of Air Florida (Committee) was afforded the opportunity to provide any additional information which it felt the Board should consider. The Board has considered your comments and arguments.

It is your contention that your client is a "representative" within the meaning of Section 1, Sixth, of the Railway Labor Act, and that the Board's requirement that representatives comply with the reporting and disclosure provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §401 et seq., is in excess of the Board's authority under the RLA. You further assert that the Committee's status as a representative has been established. Finally, you contend that the applications filed with the Board must be dismissed under §1206.2(a) of the Board's Rules.

The Board believes that its position, that filing the reporting and disclosure forms required under LMRDA is a precondition to being a representative under the RLA, is the correct one. Such a procedure is entirely consistent with the provisions of Section 2 of the RLA, and insures that employees are represented by bona fide representatives capable of dealing with carriers at arms'length.

Should the Committee, at any time prior to the printing of the ballots for the elections, make the necessary filings with the U.S. Department of Labor and so advise the Board, the Board would place the Committee on the ballots as the incumbent organization. In the alternative, should the Committee ultimately obtain a final judicial determination that the Board's position with respect to LMRDA is in excess of its authority, the Board would put the Committee on the ballots.

The Committee's contention regarding the showing of interest under §1206.2(a) of the Board's Rules is premature under the decision of Judge Aronovitz in Air Florida v. NMB, Case Nos. 81-1932 Civ. and 81-1783 Civ. (S.D. Fl. Jan. 19, 1982), slip. op. at 4, since only post-certification review of Board determinations is available under the RLA. However, in order to clarify any misunderstanding, the Board's position will be restated.

Section 1206.2 of the Board's Rules, 29 C.F.R. Part 1206, provides:

> §1206.2 Percentage of valid authorizations required to determine existence of a representation dispute.
>
> (a) Where the employees involved in a representation dispute are represented by an individual or labor organization, either local or national in scope and are covered by a valid existing contract between such representative and the carrier a showing of proved authorizations (checked and verified as to date, signature, and employment status) from at least a majority of the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the representation desires of the employees under the provisions of Section 2, Ninth, of the Railway Labor Act.

> (b) Where the employees involved in a representation dispute are unrepresented, a showing of proved authorizations from at least thirty-five (35) percent of the employees in the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the representation desires of the employees under the provisions of Section 2, Ninth, of the Railway Labor Act.

If the Committee is a representative and the agreement between the Committee and Air Florida is a valid existing agreement, the showing of interest requirement in these cases would still be 35% under the Board's long-standing interpretation of its Rule. The Board requires that the agreement have been in effect for at least one year, and that it cover the entire craft or class, in order to bring §1206.2(a) into effect. See, Air Florida, 8 NMB No. 181 (1981), at 574-5, and the cases cited therein. In the present cases, the agreement between the Committee and Air Florida was signed on August 1, 1980, and was thus in effect for less than one year prior to the filing of the applications on May 21, 1981. In addition, airport and ramp service agents do not constitute an entire craft or class for purposes of representation.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. Victor J. Herbert
Wyatt Johnson, Esq.
Mr. W. W. Winpisinger
George Tucker, Esq.
Mr. Eli Timoner
Joseph Z. Fleming, Esq.
Department of Justice
Mr. Charles H. Callaham

RKQ/dcb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 65

In the matter of the
REPRESENTATION OF EMPLOYEES
of
BIG SKY AIRLINES
Passenger Service Employees

CASE NO. R-5283
DISMISSAL
January 26, 1982

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters, on November 9, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Passenger Service Employees", employees of Big Sky Airlines.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Passenger Service Employees, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IBT	Void Ballots	Number of Employees Eligible
Passenger Service Employees	7	2	46

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 66

In the matter of the
REPRESENTATION OF EMPLOYEES
of
AEROMECH AIRLINES
Pilots

CASE NO. R-4868
(FILE NO. CR-5272)

AMENDED
CERTIFICATION

February 2, 1982

On December 29, 1981, a joint request by the Air Line Pilots Association (ALPA) and the Union of Professional Airmen (UPA) was made to the National Mediation Board to effect a transfer of the present certification issued to the Union of Professional Airmen in NMB Case No. R-4868 covering the craft or class of Pilots, employees of Aeromech Airlines to the Air Line Pilots Association.

This request was made as a result of a resolution from the UPA Board of Directors' Meeting on June 4 and 5, 1981; a resolution from the ALPA Executive Committee on September 16 and 17, 1981; a resolution from the ALPA Executive Board on November 10, 11 and 12, 1981; and results of the Mail Ballot of the ALPA Board of Directors counted on December 11, 1981.

FINDINGS

The request for the transfer of the certification covering the craft or class of Pilots, employees of Aeromech Airlines was assigned NMB File No. CR-5272 and assigned to Board Representative Laurette Piculin for investigation and verification of signatures on the consent cards.

At the time the request was received the employees were represented by the UPA and no organization other than the ALPA had made any claim to representation.

The following is the result of the check of consent cards as reported by Board Representative Piculin on January 26, 1982:

Results of Check of Authorization:

	Consenting to the transfer of certification from UPA to the ALPA	Number of Employees Eligible
Pilots	52	59

CERTIFICATION

NOW, THEREFORE, in accordance with the procedure set forth above and based upon its investigation pursuant thereto, the National Mediation Board hereby transfers the certification issued to the Union of Professional Airmen in NMB Case No. R-4868 to the Air Line Pilots Association and certifies that the Air Line Pilots Association has been duly designated and authorized to represent for the purposes of the Railway Labor Act, the craft or class of Pilots, employees of Aeromech Airlines its successors and assigns. This transfer of certification is issued without bar to any future representation proceeding involving these employees.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 67

In the matter of the	CASE NO. R-5100
REPRESENTATION OF EMPLOYEES	REVOCATION OF CERTIFICATION
of	February 2, 1982
MANUFACTURERS RAILWAY	
Yardmasters	

On January 19, 1982, Mr. Roy S. Ruffin, Individual, addressed a letter to Rowland K. Quinn, Jr., Executive Secretary, National Mediation Board herein quoted as follows:

> "I no longer wish to represent the yardmasters on the Manufacturer's Railway. At this time I feel that all the conditions we were seeking have been met by the Manufacturers' management; therefore, I wish you to accept this letter as my resignation."

Board records confirm that the certification held by Mr. Roy S. Ruffin for the craft or class of Yardmasters, employees of the Manufacturers Railway Company, was issued on August 5, 1980.

Under all the circumstances involved and on the basis of the above disclaimer, the National Mediation Board hereby revokes, effective January 29, 1982, the certification issued to Mr. Roy S. Ruffin on August 5, 1980, Board Case No. R-5100. Employees in the craft or class of Yardmasters on the Manufacturers Railway shall be deemed to be unrepresented, and the time limits of Section 1206.4 of the Board's Rules shall not apply to any application for investigation of a representation dispute which may be filed hereafter.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 68
February 2, 1982

Mr. W. W. Winpisinger, Int'l President
International Association of Machinists
& Aerospace Workers, AFL-CIO
1300 Connecticut Avenue, N.W.
Washington, DC 20036

Re: NMB Case No. R-5213, Transkentucky
Transportation Railroad Company

Dear Mr. Winpisinger:

This will acknowledge receipt of your letter of November 16, 1981, in which you indicate that the International Association of Machinists and Aerospace Workers, AFL-CIO wishes to surrender its certification as representative of Locomotive Engineers of the Transkentucky Transportation Railroad Company.

The Board's records indicate that IAM&AW was certified as representative of that craft or class on August 28, 1981, in NMB Case No. R-5213 (8 NMB No. 207). This is to advise you that the Board expects certified representatives to serve as representatives for at least one year. Therefore, the Board cannot recognize your desire to surrender the certification at the present time.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. George DeHague
Mr. Robert Ashmore
Mr. W. F. Hughes

RKQ/dca

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 69

In the matter of the	CASE NO. R-5278
REPRESENTATION OF EMPLOYEES	DISMISSAL
of	February 4, 1982
INTERNATIONAL IN-FLIGHT CATERING COMPANY	
Commissary/Catering Employees	

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW), on October 27, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Commissary/Catering Employees", employees of International In-Flight Catering Company.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Charles R. Barnes to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Commissary/Catering Employees, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Barnes, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IAM&AW	Void Ballots	Number of Employees Eligible
Commissary/ Catering Employees	98	2	303

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 70

In the matter of the Petition of	FILE NO. C-5241
	DETERMINATION OF JURISDICTION
JAMES FORDICE, et. al.	
pursuant to the Railway Labor Act	February 4, 1982
involving employees of	
ROSS AVIATION, INC.	

On October 5, 1981, certain employees of Ross Aviation, Inc., (Ross) filed a petition entitled "Application for Reconsideration and Determination" with the National Mediation Board. The petition filed by eight named Ross pilots, James Fordice, Keith P. Larison, Ernest Little, Richard V. Masseger, Chuck Mensching, Lewis C. Smith, III, John Tessmer, and Harold M. Vetter, requested a determination as to whether Ross remains a carrier within the meaning of the Act. Said petition was assigned NMB File No. C-5241.

At the time the petition was received, the pilots at Ross were represented by the Union of Professional Airmen (UPA), pursuant to certification by the National Mediation Board in NMB Case No. R-4231.

ISSUES

The issue before the Board in this case is whether Ross is a common carrier by air within the meaning of Section 201 of the Railway Labor Act, as amended, 45 U.S.C. §181.

BACKGROUND

The question of Ross's status as carrier by air was brought before the Board by the UPA in 1971. On February 14, 1972, the Board issued a determination in Case No. R-4231 that Ross was a "carrier" within the meaning of the Act, 5 NMB 145 (1972). At the time the Board conducted its investigation, Ross was a publicly owned Delaware corporation which operated as an air taxi under a certificate issued jointly to it and Great Western Airlines, a subsidiary of Ross.

In 1972, Ross held a contract with the Atomic Energy Commission, the predecessor of the Department of Energy (DOE). This contract required Ross to transport government cargo outside the continental United States. In addition, Ross operated a run between Albuquerque and Los Alamos, New Mexico.

In NMB Case No. R-4231, the Board based its determination that Ross was a common carrier by air, and therefore subject to the Board's jurisdiction, on several criteria.

1. Ross was subject to the regulatory provisions of the Federal Aviation Act and the agencies created by that Act to regulate air commerce; the Civil Aeronautics Board (CAB) and the Federal Aviation Administration (FAA).
2. Ross, along with Great Western Airlines, functioned as an air taxi/commercial operator under a certificate issued by the FAA. "The area of operations specified by the certificate [was] the 'Continental United States excluding Alaska'".
3. Ross transported cargo for the AEC outside the continental United States.
4. Ross transported persons or property including the general public, between Albuquerque and Los Alamos, New Mexico.
5. Ross advertised its Albuquerque-Los Alamos service in the local telephone directory and listed its schedules in the Official Airline Guide.

6. Ross was listed in the World Aviation Directory, as a scheduled and U.S. Postal Service air carrier.

The Board concluded that "Ross performs an essential link in the air transportation of persons and property for compensation or hire..."

This dispute is currently before the Board because the petitioners in this matter are named plaintiffs in litigation involving overtime compensation under the Fair Labor Standards Act before the United States District Court for the District of New Mexico. Ross had sought to have the action dismissed on the basis that the employees in question are subject to the provisions of the Railway Labor Act and therefore ineligible to receive overtime compensation under the FLSA. Both parties to that action, as well as the certified representative of the pilots on Ross, have submitted their positions on this issue to the Board.

CONTENTIONS

A. The Petitioners

The petitioners allege that Ross has undergone both structural and operational changes since 1972 which remove Ross from the Board's jurisdiction. Specifically, Ross and Great Western Airlines are now wholly-owned subsidiaries of Sterling Oil of Tulsa. Although Ross still operates its Los Alamos-Albuquerque run, petitioners allege that it does so solely to fulfill its contractual obligations with DOE.

B. Ross Aviation

Ross' position is that, indeed, there have been substantial changes in its operations since 1972. Yet, the company maintains, contrary to the applicants' assertion, those changes have served to strengthen Ross' status as a common carrier by air. For example, in 1972, it was Great Western Airlines, not Ross Aviation, which transported mail for the federal government (pursuant to contract with the U.S. Postal Service). In 1982, Ross Aviation itself transports mail for the federal government pursuant to its contract with DOE.

C. The Union

The UPA has taken the position that "any dispute concerning the carrier status of Ross Aviation under the Railway Labor Act is best resolved by the Board..."

DISCUSSION

I.

The Railway Labor Act was amended in 1936 to extend the Act's coverage to certain air carriers. Section 201 of the Act provides in part as follows:

> "All the provisions of Sections 151 to 152 and 154 to 163 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government..."

II.

Subsequent to the Board's receipt of the present application, the UPA and the Air Line Pilots Association (ALPA) reached an agreement to transfer UPA's certification to ALPA. On January 19, 1982, the certification was amended accordingly in File No. CR-5279, 9 NMB No. 54.

III.

The petitioners have failed to allege any significant changes since 1972 which would alter Ross' status as a common carrier by air.

One of the salient considerations of the Board in its decision in 1972 was the fact that Ross performed "an essential link in the air transportation of persons and property for compensation or hire..." Ross still provides an essential link in air transportation, as Ross is the only carrier providing direct service to the public between Albuquerque and Los Alamos. In addition, Ross provides an essential service in its transportation of mail and other property for the United States government via its contract with DOE.

In short, although Ross Aviation's operations have changed since 1972, the factors which made it subject to the Railway Labor Act have not.

CONCLUSION

Based on the foregoing, the Board finds that Ross Aviation, Inc. is still a common carrier by air within the Railway Labor Act, and is therefore, still subject to the Board's jurisdiction.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Michael H. Campbell, Esq.
A. Patrick Maynez, Esq.
Mr. John N. Dodson

RKQ/mja

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 71

In the matter of the : CASE NO. R-5285
REPRESENTATION OF EMPLOYEES : CERTIFICATION
of : February 16, 1982
MARYLAND & PENNSYLVANIA RAILROAD COMPANY :
Carmen, Helpers & Apprentices :

The services of the National Mediation Board were invoked by the United Transportation Union (UTU), on December 2, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Carmen, Helpers & Apprentices", employees of the Maryland & Pennsylvania Railroad Company.

At the time this application was received, these employees were represented by the Brotherhood of M&P Shop Crafts of America. Subsequently, the Board was advised by letter of January 7, 1982, from Charles Bradney, President of the Brotherhood of M&P Shop Crafts of America, that that organization did not wish to be included in the election in this case.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Carmen, Helpers & Apprentices, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	UTU	Number of Employees Eligible
Carmen, Helpers & Apprentices	2	2

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the United Transportation Union, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Carmen, Helpers & Apprentices, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

In the Matter of the

Application of the

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION

alleging a representation dispute pursuant to Section 2 Ninth, of the Railway Labor Act

involving employees of

ALITALIA AIRLINES

9 NMB No. 72

Case No. R-5134

FINDINGS UPON INVESTIGATION

February 16, 1982

On June 5, 1980, the Office and Professional Employees International Union (OPEIU) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving employees of Alitalia Airlines denominated as "Clerical, Office and Passenger Service Employees" and "Sales Representatives." On August 13, 1980, OPEIU amended its application to cover Office Clerical Employees. Said application has been docketed as NMB Case No. R-5134.

At the time the application was filed, the International Association of Machinists and Aerospace Workers, AFL-CIO, (IAM&AW) represented the craft or class of Clerical, Office, Stores, Fleet and Passenger Service Employees on Alitalia pursuant to its certification in NMB Case No. R-2597 (August 8, 1952).

During the course of the Board's investigation, a question arose concerning whether a craft or class of Office Clerical Employees is proper for representation purposes under the circumstances which presently exist on Alitalia.

On October 31, 1980, the Board ordered that a hearing be held in this case. 8 NMB No. 28. The hearing commenced on March 11, 1981, in Washington, D. C., before Hearing Officer Roland Watkins. Additional hearings were held on March 12, and April 15-16, 1981. Representatives of the OPEIU, IAM&AW, and the Carrier appeared, participated and were afforded full opportunity to present their respective positions and evidence, and to examine and cross-examine witnesses. Although OPEIU, the IAM&AW, and the Carrier were allowed the opportunity to submit post hearing briefs and reply briefs, only the IAM and the Carrier submitted post-hearing briefs; neither the IAM&AW, OPEIU nor Alitalia submitted reply briefs.

ISSUE

On the basis of the Board's investigation and hearing in this case, the issue is whether Office Clerical Employees constitute a separate and distinct craft or class under the circumstances which exist on Alitalia.

CONTENTIONS

OPEIU argues that the IAM&AW has not adequately represented thoseemployees in the Office classifications. In light of changes in the operations of the Carrier and recent determinations of the Board regarding appropriate crafts or classes, OPEIU maintains that the certified craft or class is no longer appropriate on Alitalia. OPEIU contends that an Office Clerical craft or class comprised of the following classifications is now appropriate:

Secretary - all titles
Public Relations Press Representative
Personnel Administration Representative
Cost and Budget Analyst
Stock/Mail Clerk
Driver
Shipping Clerk
Technical Purchasing Buyer
Accounting - all titles (including Accountant, Bookkeeper, Accounting Clerk, Cashier, Accounting Representative Accounts Control)

- Telephone Operator/Receptionist
- Special Flights Representative
- Marketing Programs Representative
- Tariff Representative
- Contract Administration Representative
- Internationsl Services Representative
- Agency and Interline Representative
- Traffic and Market Analysis Representative
- Tele-Ticketing Representative

The IAM contends that there is no basis for reversing the Board's previous determination regarding both the IAM's certification to represent the employees of Alitalia in the existing craft or class and the appropriateness of that craft or class on Alitalia. Furthermore, the IAM maintains that the job categories the OPEIU seeks to establish as a separate craft or class of Office Clerical Employees do not have a strong enough community of interest to warrant their representation in a separate craft or class. Assuming that the latter contention is true, the IAM&AW asserts that the application should be dismissed.

Alitalia contends that the certification continues to be appropriate under the circumstances which presently exist at Alitalia. Should the NMB determine a craft or class of Office Clerical Employees to be appropriate, the following classifications should be included:

- Secretary (excluding Executive Secretary, North America Manager; the two Secretaries in the Personnel Department and all Field Sales Secretaries)
- Junior Secretary
- Internal Services Representative
- Contract Administration Representative
- Mail Clerk
- Technical Purchasing Representative
- Shipping Clerk
- General Accounting Representative

Accounts Control Representative
Accounting Representative
Typist/Accounting Clerk
Audit Machine Operator
Cashier
Cargo Tariffs Representative
Telephone Operator/Receptionist
Teleticketing Representative

Alitalia further contends that the classifications of Executive Secretary to the North America Manager, Secretary (Personnel Department) and Secretary (Personnel) should be excluded from any Office Clerical craft or class because these employees are the alter ego of management officials. Furthermore, the Carrier argues that the classifications of field Sales Secretary, Public Relations Press Representative, and Agency and Interline Representative perform predominately passenger service functions and should be excluded from an Office Clerical craft or class.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§152. Accordingly, the Board finds as follows:

I

Section 201 of the Act, extends all of the provisions of Title I of the Act, except the provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce...and every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner of rendition of his service."

II

Alitalia Airlines is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181.

III

Section 2, Fourth, of the Act, 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

IV

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V

IAM&AW and OPEIU are labor organizations and representatives as defined in Section 1, Sixth, 45 U.S.C. §151, Sixth, and Section 2, Ninth, 45 U.S.C. §152, Ninth, of the Act.

FINDINGS OF FACT

The Board has considered the entire record in this case, including the transcript of the hearing, all exhibits, the post-hearing briefs submitted by the Carrier and the IAM&AW, and all correspondence and records of the Board relating to this matter. Upon this record, the Board finds as follows:

I

Since August 8, 1952, the IAM&AW has been the certified representative of the craft or class of Clerical, Office, Stores, Fleet and Passenger Service Employees of Alitalia. NMB Case No. R-2597.

In Case No. R-4608, the International Brotherhood of Teamsters sought to represent a craft or class of Clerical, Office, Fleet and Passenger Service Employees. The Board held that IAM&AW's certification was valid, that the craft or class certified continued to be a proper one, and that the showing of interest would be 35% in view of the fact that only part of the craft or class was covered by an agreement. The investigation, however, revealed that IBT's showing of interest was less than 35% and the application was dismissed. See 6 NMB No. 801 (1976).

II

Alitalia is a foreign air carrier headquartered in Rome, Italy. Worldwide, Alitalia is organized into geographical divisions, with centralized control remaining in Rome. The North American operation, which encompasses the United States, Canada and Mexico, is headquartered in New York City, New York. The Director of the North American Division oversees the entire North American operation.

The North American Division is comprised of various departments - Personnel, Administration, Cargo Sales, Traffic, General Sales and Marketing - all of which are located in New York City. Each department is headed by a Manager who reports to the Director.

III

The Personnel Department handles all employee relations, selection and training, and personnel administration. Duties and responsibilities of employees in this department are as follows:

Secretary - There are several secretaries in this department who perform clerical functions for specific individuals. The Secretary (Personnel Department) performs the functions of dictation, typing, receiving and distributing incoming mail, maintaining files and handling phone calls for the Personnel Manager. This employee also maintains the appointment calendar and meeting schedules and coordinates arrangements for meetings for the Personnel Manager. The Carrier also has a secretary who performs the above functions for the Employee Relations Officer, the chief individual in charge of employee relations, and the Selection & Training Coordinator. There is also an individual classified as Secretary (Personnel Administration) who performs clerical duties for the Personnel Administration Office.

Personnel Systems & Research Representative - Main job function of this employee is to coordinate the selection and training of newly hired personnel.

Payroll Representative - This employee assists the Personnel Expenditures Supervisor in the processing of the payroll. In performing this function, the individual is required to process the inputs for payroll changes such as hiring, transfers, leaves of absence, vacations, terminations, and deductions; audit time cards and related records to ensure the correct payment for overtime work; reconcile the payroll outputs by balancing to the payroll controls and allocating costs to the proper office or department; distribute paychecks and prepare the reconciliation report for headquarters; and allocate the statutory and voluntary deductions and make payment to the proper entities.

Personnel Expenditures Representatives - This individual assists the Personnel Expenditures Supervisor in controlling personnel expenditures. In performing this function, the individual is required to reconcile and process the various pension plan payments and disbursements; conduct appropriate audits; assist the Payroll Supervisor in filing the quarterly taxes and personnel expenditures, budget and budget control reports; process the business trip expense reports; and maintain and update the per-diem allowance schedules for the U.S.A. personnel, making the necessary adjustments in the expense reports.

Personnel Benefits Representative - The main duty of this individual is to help ensure the efficient, effective administration of the employee benefits program and monitor the attendance and travel permit records for compliance with the company's policies and statutory requirements. In performing this function, the individual is required to disseminate employee benefits form and information; process payments for insurance premiums and handles employee status changes; and process the Worker's Compensation and Disability claims.

Personnel Administration Representative - This individual provides assistance in the administration of the company's salary program, pension plan program, personnel records, and related personnel functions. Specifically, this individual must coordinate salary reviews, calculate adjustments and maintain and monitor the leave status of personnel.

IV

The Administration and Financial Department is headed by the Comptroller. This department is divided into various offices each headed by a manager. Duties and responsibilities of employees in this department are as follows:

Secretary - There are several secretaries in this department who perform clerical duties for the Comptroller, the Administrative Manager, the Stock Room personnel, Technical Purchasing Office, and the General Accounting Office. The Secretary in the Technical Purchasing Office has an assistant who holds the title of Junior Secretary.

A. Cost and Budget Analysis Section

Cost & Budget Analysis Representative - The main duty of this employee is to assist the Administrative Manager in budgetary analysis and control and related matters. In performing this duty, the Representative is required to prepare and distribute the budget planning booklet with guidelines, instructions, explanations, and interpretations; monitor approved operating budgets; conduct comparative studies and analysis of forecasts and expenditures to assist management in evaluating and approving budget inputs; update budgets to reflect new contracts; and conduct special projects pertaining to company expense trends and related subjects as requested by the Administrative Manager.

B. General Affairs & Internal Services Office

Internal Services Representative - It is this individual's responsibility to receive, process and fulfill requests from the Carrier's U.S.A. operations and headquarters for printed materials, equipment, and services, including printing, stationery, photocopying, duplicating, teletype, shipping, postal, and computer equipment supplies; catering items; office furniture and equipment; medical and surgical supplies; and miscellaneous items.

Contract Administration Representative - The Contract Administration Representative is required to review all contracts with respect to leases, insurances, and services; maintain list of current contracts; verify and process the payment of services; prepare capital expenditure projections for the current year's budget; maintain inventory records and controls for all capital investments at the North American divisional headquarters; and prepare reports for management, the insurance company and police department concerning theft and the transfer and disposition of equipment no longer in use.

Stock Clerk - The two individuals holding this title work out of the Carrier's warehouse located at John F. Kennedy Airport in New York City. These individuals are required to pick up incoming shipments of company materials; prepare distribution shipments of advertising materials and supplies for the company's North American offices and prepare air waybills and shipping memos for these shipments; assist the Carrier's third party drivers in loading and unloading shipments of materials to all offices; conduct stockroom inventories and contact appropriate office for replenishment; and perform duties of forklift operator and driver as required including the maintenance of such equipment when necessary.

General Accounting Representative - The main function is to ensure compliance with generally acceptable accounting principles and company policy in checking and verifying bank statements and tabulations and efficiently discharging associated duties. In performing the above, the individual is required to reconcile all bank statements on a monthly basis; monitor flow of deposits into escrow account; monitor per-diem advances; and research banks' interest rates to determine highest rate available for investment of funds.

Driver - It is the main duty of the Driver to operate the Carrier's motor vehicles to pick up, load, deliver and unload mail and material; transport the company employees, clients, diplomatic mail and newspapers between the North American divisional headquarters and designated destinations; ensure that the company's vehicles are in proper working condition, arranging for their maintenance and repair; maintain operating records and prepare vehicles usage reports; and assist in the mailroom when required.

Mail Clerks - These individuals work at the Carrier's offices, located on Fifth Avenue in New York City, sorting and distributing mail. They receive mail from all of the Carrier's offices and forward it to Rome or places within the United States.

Technical Purchasing Representative - Main function of this representative is to help ensure proper product and aircraft support for the Carrier's air fleet by efficiently procuring and expediting shipments of technical materials and parts. This individual works under the supervision of the Technical Purchasing Supervisor and is located at JFK.

Technical Purchasing Shipping Clerk - This individual is required to receive, date stamp, and count all incoming packing lists and invoices; match packing lists with invoices for preparation of shipments; forward originals and copies of invoices to appropriate offices; investigate shipping discrepancies through a thorough review of documentation; and prepare monthly report of packing lists, invoices, and shipments.

Accounts Control Representative - The Carrier has numerous individuals classified as Accounts Control Representative who work in various sections of the General Accounting Office. The main function of the Accounting Representative (Revenue Accounting Section) is to ensure that non-cash passenger sales receipts are correct, making proper adjustments for any discrepancies, and expedite payment of used but unpaid tickets before statute of limitation expire. The representative in the Revenue Accounting Section must ensure that export cargo debits and credits are properly processed, correcting any discrepancies if necessary. Reviewing the Carrier's accounts payable transactions and related activities in order to ensure that such transactions and activities are completed accurately and expeditiously is the responsibility of the representative in the Accounts Payable Section. The Accounts Control Representative (Credits and Collections Section) must guarantee accurate processing of daily revenue and exact reconciliation of tabulations making adjustments for any discrepancies, and proper adherence to Carrier policy both in credit administration and monitoring delinquent accounts and recovering monies outstanding.

Accounting Representative - This individual works with the Accounting Control Representatives to ensure that the financial transactions are accurately processed and recorded. Their duties are similar to those of the Accounting Control Representatives. Accounting Representatives are employed in the Revenue Accounting Passenger, Revenue Accounting Cargo, Accounts Payable and Credits and Collections Sections.

Typist/Accounting Clerk - These employees perform clerical duties for the Revenue Accounting, Credits and Collections, Accounts Payable, and Revenue Accounting Passenger Sections. The individual in the latter Section also handles invoices and makes reports of those which are processed.

Audit Machine Operator (General Accounting) This employee enters accounting data into the Carrier's computer system. Additionally, the employee must type debits and credit journal entries; reconcile check and tape balances by use of an adding machine verifying journal numbers and totals determing any errors and making the necessary corrections; and make updates and appendages for programs' memory banks.

Cashier (General Accounting) - This individual receives and disperses Carrier funds as directed by the General Accounting Manager and maintains accurate records of these transactions. The employee must make daily deposits of cash and checks in the various banks. On a dialy basis, the Cashier informs the Manager of the cash on hand and bank balances.

V

The Cargo Department is comprised of two offices - Cargo Sales and the Telephone Sales/Customer Service/ Cargo. Duties and responsibilities of employees in this department are described below.

Secretary (Cargo Department) - This individual performs typing, filing, dictation, and answering of telephones for the Cargo Department Manager.

Cargo Import Sales Representative - Essentially, this employee's main duty is to coordinate and promote the Carrier's cargo import sales efforts. In fulfilling these responsibilities, the employee must develop, establish, and maintain contacts with importers and foreign trade firms buying goods in the overseas market; follow-up on sales leads and service activities requested by overseas cargo sales offices; follow-up and intervene with customers and intermediaries in resolving administrative difficulties related to cargo shipments; maintain current information on business potential of existing and prospective accounts; and represent the company at trade fairs, exhibitions, and associations whenever requested to establish, maintain, and develop relationships with key personnel in the import world.

Cargo Tariffs Regulations & Special Flight Specialists.This employee's main duty is to interpret I. A.T.A. resolutions, rules and regulations and assist with rate construction relating to cargo in order to maintain industry competitiveness. In so doing, the representative must maintain files, manuals, and sources of information relating to I. A.T.A. resolutions and CAB tariffs and carrier manuals and circulars for quotations and reference purposes; submit filings of cargo and governing rules through filing agents to appropriate government agencies in coordination with headquarters and the U.S.A. Cargo Manager; monitor and analyze filings of competitors; compile statistical data pertaining to import and export activity, loads and quotas; and whenever requested, represent the company at meetings and committees responsibile for publication of international air freight tariff book.

Cargo Telephone Sales & Customer Service Representative - Through use of the telephone, this employee must complement cargo sales and operations functions by accepting reservations and providing services and follow-up regarding transport of commercial freight. He must also enter data into the computer to complete reservations and insert data into the computer to complete reservations and insert remarks concerning special handling as required; coordinate closely with cargo operations in updating computer input necessary for flight closings; contact the Carrier's principal customers daily to ensure that adequate cargo space has been allocated for their needs; book cargo shipments for outlying stations; respond to customer inquiries concerning cargo shipments; and maintain air freight quantitative data and provide cargo-related information to the Carrier's various offices upon request.

VI

The Cargo Operations Department is located at JFK and is headed by the Station Manager, Cargo Operations. Only two offices - Cargo Warehouse Operations and the Cargo Office Operations - comprise this department.

The present collective bargaining agreement between the IAM and the Carrier covering the Cargo Office Agents, Cargo Warehouse Agents, Lead Cargo Agents, Lead Commissary Agents and Commissary Agent describes the duties and responsibilities of these employees as follows:

Cargo Warehouse Agent - A Cargo Agent, by his shipping, receiving and warehousing abilities, performs those functions necessary for the efficient handling of freight and material. The duties of a Cargo Warehouse Agent will include receiving, weighing, labeling, storing, recooperating, transferring, shipping and handling freight and material and lost and found post entered baggage; checks shipments against manifests and related documents; performs such warehousing and expediting functions and fills out such forms and operates such mechanical and computer equipment as are required for the efficient movement of cargo; receives and delivers cargo and related documents to truckmen and government agencies; receives and delivers urgent shipments, valuable cargo and related documents to and from passenger flights; may be required to operate automotive vehicles in connection with his work.

Cargo Office Agent - A Cargo Office Agent, by his technical and office skills, processes documentation and performs those manual and computerized functions necessary for the expeditious shipment of air cargo. The duties of a Cargo Office Agent will include performing such functions and preparing such forms and documentation as are required for the efficient handling, storing and moving of revenue and nonrevenue cargo; typing and reproduction of airways bills, manifests, arrival notices, cargo transfer manifests, export declarations and all other documents necessary for the processing of revenue and nonrevenue cargo. He advises and contacts shippers and consignees of all pertinent information regarding their shipments; collects air freight charges in accordance with current procedures; clears documentation through government agencies; maintains familiarity with all freight rate constructions, restrictions and Company and Government rules and regulations for the proper shipping of freight and processing and filing of documents; may be required to calculate weight and balance for Cargo aircraft, handle flight crews and operate automotive vehicles in connection with his work.

Commissary Agent - A Commissary Agent by his manual and clerical skills, provisions the aircraft for human comfort and convenience. The duties of a Commissary Agent shall include the checking and delivery of food, Commissary supplies and related equipment to and from kitchen and aircraft; the loading and unloading of aircraft with food and related supplies and equipment; and the preparation of the aircraft interior for the comfort of passengers prior to departure. A Commissary Agent may be required to drive automotive vehicles in connection with Commissary work, and to perform Commissary stockroom duties.

The Lead Cargo Agent oversees the work of the Cargo Warehouse Agents and the Cargo Office Agent. The Lead Commissary Agent oversees Commissary Agents. Both are working members of the Cargo and Commissary operations respectively.

Two employee classifications in this department - Secretary and Accounts Control/Cashier - are not covered by any collective bargaining agreement. These employees perform mainly clerical functions.

VII

The Traffic Department, which is located at the headquarters on Fifth Avenue, is comprised of three offices - Telephone Sales/Passenger, Communications, and Flight Operations - each of which is headed by a manager.

A.

The following employees work in the Telephone Sales/Passenger Office:

Space Control Representative
Telephone Sales Representative
Secretary

Space Control Representative - This individual's main duty is to ensure best utilization of space on the aircraft based upon load factors, market trend and traffic yield to achieve a more profitable operation. To achieve this goal, the employee must evaluate bookings and market trends and based on such results, change level of overlooking: evaluate requests for large groups or extra flights based on economic and commercial feasibility; and in future flights, schedules and company policy, check schedule changes in computer and point out discrepancies to headquarters for correction and updating.

Telephone Sales Representative - The functions performed by the Telephone Sales Representative are similar to those of a reservations agent. These employees have contact with the public by phone, handle reservations, and enter such reservations into the computer.

Secretary - This employee performs clerical duties for the individuals in this office.

B.

The following employees work in the Communications Office:

Telephone Operator/Receptionist
Technical Support System Representative
Communications Network Specialist
Secretary

Telephone Operator/Receptionist - It is this individual's responsibility to greet, screen, announce, and direct, where appropriate, visitors to their proper destinations; answer and route all incoming telephone calls and place outgoing calls as necessary; and handle incoming and outgoing mail pieces for messenger service, including advertising materials, brochures and posters.

Technical Support System Representative - Main duty of this employee is to help ensure efficient, effective communications by monitoring, maintaining, and supporting the telecommunications and data systems and by operating teletype and teleticket equipment.

Communications Network Specialist - The specialist must maintain and repair the telecommunications systems, networks, and equipment to ensure voice, data, teletype, and technical control; train operating personnel for field and technical control; center as required; and schedule and perform maintenance service for all locations in order to minimize downtime for real time systems.

Secretary - This individual provides clerical services such as typing, filing, and answering phones for this office.

C.

The Flight Operations Office is comprised of the Manager and presently three Flight Operations Representatives. The representatives are required to monitor and analyze meteorological situation in order to be up-to-date on weather conditions for airport station and alternate airports; monitor company flight movements for North America; control flight crew lists to ensure that the number is in accordance with passenger bookings; and monitor Federal Aviation Administration (FAA) guidelines regarding flight operations.

VIII

The Passenger Operations Department is located at JFK and is composed of three offices - Passenger Service, Catering and Maintenance.

A.

The Passenger Service Office is headed by a Manager who has seven supervisors under him. Six of the supervisors hold the title of Passenger Service Supervisor and one has the title of Special Services Supervisor.

The Passenger Service Supervisors oversee the work of forty-nine Traffic Representatives (43 full-time and 6 part-time). These representatives are presently covered by a collective bargaining agreement between the Carrier and the IAM. This agreement describes the duties and responsibilities of the employees as follows:

> A Traffic Representative by his public contact, technical and office skills provides ground service to the Alitalia traveling public. The duties of a Traffic Representative shall include handling inbound and outbound and transit passengers on and off the station, ticketing, escort duties, documentation, calculating weight and balance for passenger flights (issuing

loading instructions) reservations and information services, interline transfers handling and checking in of baggage, clearing inbound and outbound ship papers, hotel duties, radio dispatch and teletype operation in connection with the above and assist with duties of Ramp Coordinator when necessary, and all other functions necessary in handling passengers.
In addition, he may be required to drive automotive vehicles in connection with his work, do clerical duties and transmit transit lists.

> Lead Traffic Representative - Under direct supervision, a Lead Traffic Representative shall lead and direct other Traffic Representatives in the performance of their duties and, as a working member of Passenger Service shall also perform the duties of a Traffic Representative when necessary within his areas. A Lead Traffic Representative shall give Traffic Representatives on-the-job familiarization in all phases of Passenger Service Operations.

Special Services Representatives are not covered under any collective bargaining agreement. Their duties are similar to those of the Traffic Representatives but performed for VIP passengers in the Carrier's first class lounge at JFK.

B.

The Catering Office is headed by a Manager who has three Catering Supervisors under him. These supervisors oversee the work of sixteen Commissary Agents, who are covered under a collective bargaining agreement with the IAM and whose duties are described above. This office also has a Secretary who performs clerical duties. There are two individuals who have the title of Accounts Control/Cashier whose duty is to help ensure budgetary control in processing service invoices and incoming revenue receipts in accordance with generally acceptable accounting principles and company policy and efficiently discharge related duties.

C.

The Maintenance Office consists of two Maintenance Supervisors and a Secretary who performs mainly clerical functions for the office.

IX

The duties and responsibilities of the employees in the Marketing Department are described below.

Secretary - This individual performs the clerical duties for the individuals in the Department.

Marketing Programs Representative - It is this employee's responsibility to gather, research, analyze and receive data pertinent to programs designed for management planning and control.

Traffic & Market Analysis Representative - This employee's main duty is to ensure the availability of a comprehensive data bank on the North Atlantic operations, forecast passenger revenue, conduct related analyses and prepare reports for management.

Religious Travel & Sales Promotions Representative - This individual's main responsibility is to promote sales centering on attracting religious groups.

Advertising Representative - This individual works with the Carrier's advertising agency in developing and monitoring advertising campaigns for the company's products and services. He is also required to provide ideas and/or suggestions for improving cost efficiency of trade and/or consumer market advertisements; furnish management and field personnel with information on content and/or schedule of campaigns.

Tours Representative - Main duty of this employee is to provide administrative follow-up in the implementation of tour programs and assist the field organization and travel agents in their sales efforts.

Visit USA Representative - It is this individual's responsibility to monitor the efforts of the Carrier's sales offices to make sure that sales targets are met. In so doing, the representative must maintain quantitative data regarding tour operations; process land arrangement requests for tours in North America, keeping requesting offices informed of services, costs, and payment transactions and revising services when required.

Tariffs Representative - This representative is the Carrier's tariffs expert providing support to travel agents and to the Carrier's sales offices in determining tariffs.

Teleticketing Representative - This individual is required to process and transmit teletickets accurately and on a timely basis according to established procedures. The representative must retrieve teleticketing and fare messages from agent set; prepare form for transmission of simple teletickets, and transmit teletickets through computer.

Refunds Representative - This individual processes requests from customers for refunds. When a request is made, the representative contacts the customer, makes an investigation, determines the exact amount to be refunded, and processes the refund.

Traffic Representative - Evidence reveals that this individual works in the Traffic Tariffs Regulations & Schedules Office.

X

The General Sales Department is headed by the General Sales Manager USA. The Department is divided into Regional Sales Offices and then into district sales offices. The Regional Offices and the districts that they encompass are as follows:

Regional Sales Office - New York City
Districts - New York City
Long Island
Newark
Washington, D.C.
Buffalo

Regional Sales Office - Chicago
Districts - Chicago
Cleveland
Detroit
Minneapolis-St. Paul

Regional Sales Office - Dallas
Districts - Dallas
Houston
San Francisco
Los Angeles
Atlanta
Miami

Regional Sales Office - Boston
Districts - Boston
Hartford
Philadelphia

A.

The staff at Fifth Avenue is composed of the General Sales Manager USA, Secretary, Customer Relations Manager and the Customer Relations Representative.

Secretary - There are three such secretaries who perform mainly clerical functions for the staff.

Customer Relations Representative - Main function is to ensure efficient investigation and effective resolution of customer complaints and claims pertaining to baggage and expeditious handling of immigration matters. In so doing, he must investigate and gather all pertinent data to evaluate claims and determine liability; process settlements based on these evaluations; receive, acknowledge, investigate and resolve inquiries by U.S.A. immigration authorities regarding embarkation of alien passengers within required time period.

B.

The Regional and District Sales Offices are headed by Managers. The size of the staffs in these offices depend upon the volume of business in the particular office. The following classifications comprise the field staff:

Secretary
Commercial Assistant/Passenger
Commercial Assistant/Cargo
Administrative Assistant
Junior Secretary
Passenger Sales Representative
Cargo Sales Representative
Passenger Representative

Passenger Representative/Prepaids
Resident Sales Representative
Field Secretary (Passenger/Cargo/Sales)

Commercial Assistant (Passenger and/or Cargo) - These individuals assist the Manager in his administration of duties. They coordinate all the actions among the different district offices controlling the sales and the commissions.

The Administrative Assistant - this individual performs duties similar to those of the Commercial Assistants but only in the areas of administration.

Junior Secretary - This employee performs the clerical duties of typing, filing, and answering phones.

Passenger Sales Representative - It is this individual's responsibility to effectively promote and sell the company's products and services to present and potential passenger accounts in order to achieve the prescribed sales targets. The representative must procure new sources of traffic through use of marketing research data generated by incumbent and company and/or industry as well as developing new customer contacts; ensure that the Carrier's customers are knowledgeable concerning company rules; and maintain account files and transcribe revenue data regarding travel agencies and commercial accounts.

Cargo Sales Representative - Main function of this individual is to promote and sell the company's services to present and potential cargo accounts in order to achieve prescribed targets. Their duties are similar to those of the Passenger Sales Representative but they deal with the Carrier's cargo operations.

Passenger Representative - Main duty is to successfully promote and sell the company's product, including tours, and provide quality service to present and potential customers by efficiently processing the passenger sales. The Passenger Representative must provide general information and customer assistance; sell the company's product, including tours, directly and by telephone; and book, confirm or cancel reservations.

Field Secretary (Sales, Passenger and/or Cargo) - The basic function of this individul is to provide overall support to the company's district sales office through knowledge of the regulations and documentation applicable to the air transportation industry and the effective use of administrative and secretarial skills. In a few districts, the field secretary has considerable contact with the public.

Resident Sales Representative - Handles sales for the Carrier in those areas which are not serviced by a District Sales Office. Such representatives are stationed in Tampa, Pittsburgh, Syracuse and St. Louis.

DISCUSSION

I.

The threshhold question which must be resolved here is the appropriateness of the craft or class sought by the OPEIU.

In Continental Airlines, Inc., 8 NMB Supp A (1977), the Board discussed the appropriateness of the craft or class of Office Clerical, Fleet and Passenger Service Employees in light of the many dynamic changes that have occurred in the airline industry. The Board noted that:

> The growth of the industry since the enunciation of that decision in R-1706 has been remarkable. Not only has the equipment used by the airlines required changes in the number and type of operating personnel, but also the methods of handling reservations, the loading and unloading of airplanes, the size and complexity of freight operations, and the personnel needed to monitor the internal activities of the carrier have all been evolving over the years. There has furthermore been an evolution in the types of carriers. Many have become more specialized and the industry now speaks in terms of trunk carriers, regional carriers and third-level carriers; moreover, some carriers specialize in freight or passenger service. What may be a wise management structure

> and organization for one carrier may be unworkable for another. This principle is as true in the area of industrial relations as any other. And since the Railway Labor Act has as its object the peaceful settlement of all disputes concerning rates of pay, rules, or working conditions, it is incumbent upon the Board to ensure that the craft or class unit determinations made by it promote such settlements.

At the time of the certification of the IAM, the Carrier had a small operation. The craft or class at that time consisted of eleven employees. During the last thirty years, the Carrier has grown enormously, with sales offices located throughout the United States, Canada and Mexico. The craft or class now numbers over 450 employees. Classifications which were not in existence in 1952 have subsequently been formed. This growth by the Carrier brings into serious question the appropriateness of the original craft or class determination. The evolutionary changes, which have taken place in the Carrier's operations, are clear from the evidence produced during this investigation. So far as this Carrier is concerned, the once common characteristics of the original grouping of employees in NMB Case No. R-2597 have been eroded by modern technology and job specialization. The original certification must therefore be amended by this Board to ensure that craft or class unit determinations promote the peaceful settlement of all disputes concerning rates of pay, rules, or working conditions.

II.

The Board has held that the crafts or classes of Passenger Service employees, Fleet Service Employees, and Office Clerical Employees are each appropriate for purposes of representation under the Act. See United Airlines, Inc., 6 NMB No. 888 (1977); Eastern Airlines, Inc., 6 NMB No. 1096 (1978); American Airline, Inc., 6 NMB No. 1165 (1978); China Airlines, Ltd., 6 NMB No. 1031 (1978); Air Canada, 6 NMB No. 1216 (1979). The Board believes that relitigation of the so-called R-1706 grouping is not consistent with the purposes of the Act where each of the employee groupings has an identifiable community of interest and clearly defined set of duties. Japan Air

Lines Company, Ltd., 7 NMB No. 109 (1980). An Office Clerical, Fleet and Passenger Service craft or class may be appropriate on smaller carriers where the various classifications of employees have a high degree of overlapping duties. Lanica Airlines, Inc., 6 NMB No. 1095 (1978); Columbia Pacific Airlines, Inc., 6 NMB No. 1098 (1978).

A.

Functions performed by Fleet Service Personnel were outlined by the Board in its Memorandum re Airline Industry Hearings, 5 NMB 2 (1972). In determining the existence of a craft or class, the Board considers the functional integration, work-related community of interest, work classifications, terms and conditions of employment, and salary and fringe benefits of the employees involved. Air Canada, 6 NMB No. 1216 (1979). The factor of a work related community of interest shall be, and is, an important factor considered in determining whether a craft or class of employees exist in any case; a particular grouping of employees must possess a sufficiently distinct community of interest and common functional characteristics as to ensure their mutuality of interest in the objectives of collective bargaining. See Continental Airlines, Inc., supra, and Airborne Express, Inc., 9 NMB No. 35 (1981).

Based on the above and the evidence presented, the Board finds the following personnel to be employees or subordinates within the meaning of the Act and constitute a craft or class of Fleet Service Employees:

Cargo Warehouse Agent
Cargo Office Agent
Lead Cargo Agent
Commissary Agent
Lead Commissary Agent
Stock Clerks

B.

The main function of those employees classified as Passenger Service is to provide service to the customer whether in selling tickets to passengers or providing services relating to the shipping of goods. British Airways, Inc., 7 NMB No. 189 (1980); Laker Airways, Ltd., 8 NMB No. 52 (1980). Emphasis must be placed on the inherent character of the contact, the equality of the contact, the frequency of the contact and the business exigency of the contact with the public. British Airways, Ltd., supra.

Based on the evidence presented, the Board finds the following personnel to be employees or subordinates within the meaning of the Act and constitute a craft or class of Passenger Service Employees:

Cargo Import Sales Representative
Cargo Telephone Sales & Customer Service Representative
Space Control Representative
Telephone Sales Representative
Traffic Representatives
Lead Traffic Representative
Special Service Representative
Marketing Programs Representative
Traffic & Market Analysis Representative
Religious Travel & Sales Promotions Representative
Advertising Representative
Tours Representative
Visit USA Representative
Tariffs Representative
Refunds Representative
Traffic Representative
Customer Relations Representative
Passenger Sales Representative
Cargo Sales Representative
Passenger Representative
Resident Sales Representative

C.

The community of interest of those employees in the Office Clerical classifications lies in the fact that their duties center around handling the Carrier's internal operations. See British Airways, Inc., supra. In the present case, the employees in these classifications share a common work area the carrier's office on Fifth Avenue - and fringe benefits.

Based upon the evidence presented, the Board finds the following personnel to be employees or subordinates within the meaning of the Act and part of the craft or class of Office Clerical Employees:

Secretary - excluding Secretary (Personnel Department) and Secretary (Employee Relations Officer and Selection & Training Coordinator)
Personnel Systems & Research Representative
Payroll Representative
Personnel Expenditures Representative
Personnel Benefits Representative
Personnel Administration Representative
Cost & Budget Analysis Representative
Internal Services Representative
Contract Administration Representative
Driver
Mail Clerks
Technical Purchasing Representative
Technical Purchasing Shipping Clerk
Junior Secretary (Technical Purchasing)
General Accounting Representative
Accounts Controls Representative
Accounting Representative
Typist/Accounting Clerk
Audit Machine Operator
Cashier
Telephone Operator/Receptionist
Technical Support Systems Representative
Communications Network Specialist

In China Airlines, Ltd., 6 NMB No. 1031 (1978), the Board excluded the secretaries to the General Manager and Deputy General Manager of that Carrier's North American Regional Office from the craft or class of Office Clerical employees because their duties were found to be "so substantially intertwined with the significant managerial responsibilities of those officials that they are effectively the managers' alter ego for purposes of representation under the Railway Labor Act." In British Airways, Inc., supra, the Board excluded the secretaries to the Personnel Manager and Legal Counsel. In the present case, the Board finds that the duties and responsibilities of the Secretary (Personnel Department) and the Secretary to the Employee Relations Officer and Selection & Training Coordinator are so intertwined with those of their officials that they are their alter egos for purposes of representation and are excluded from the craft or class.

As was stated earlier, the IAM holds a certification covering the craft or class of Clerical, Office, Stores, Fleet and Passenger Service Employees issued on August 8, 1952 in NMB Case No. R-2597. That certification is amended to reflect the above findings. It must be noted that the facts in this case are unique and do not set a precedent for future cases.

Investigation revealed that there has not been a collective bargaining agreement in effect for one year between the Carrier and the IAM covering the Office Clerical employees. Noting this fact and the unique circumstances of this case, the Board finds that the showing of interest required by OPEIU in R-5134 will only be 35%. Air Florida, Inc., 8 NMB No. 181 (1981) and Air Florida, Inc., 9 NMB No. 64 (1982).

ORDER

In accordance with its conclusion that the Clerical, Office, Stores, Fleet and Passenger Service Employees craft or class is not the proper craft or class for representation purposes under the circumstances, which presently exist on Alitalia, the Board orders that the certification in NMB Case No. R-2597 (August 8, 1952) be amended to show that the IAM is the authorized representative for the separate crafts or classes:

1. The craft or class of Fleet Service Employees. Said craft or class shall consist of those classifications delineated in Part II (A) of the Discussion;
2. The craft or class of Passenger Service Employees. Said craft or class shall consist of those classifications delineated in Part II (B) of the Discussion; and
3. The craft or class of Office Clerical Employees. Said craft or class shall consist of those classifications delineated in Part II (C) of the Discussion.

CONCLUSION

For the reasons stated above, the Board finds the appropriate craft or class in NMB Case No. R-5134 to be that of Office Clerical Employees consisting of those classifications stated in Part II (C) of the Discussion. OPEIU is required to submit a showing of interest only from thirty-five percent of the craft or class as provided in Section 1206.2(b) of the Rules.

Consistent with staff availability, a Board Representative will be promptly assigned to complete the investigation of these cases.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr
Executive Secretar

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NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 73

In the Matter of the Application of the	CASE NO. R-5165
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AIRLINE DIVISION	FINDINGS UPON INVESTIGATION, DISMISSAL
alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor	FEBRUARY 16, 1982
involving personnel of	
PAN AMERICAN WORLD AIRWAYS, INC.	

On December 1, 1980, the International Brotherhood of Teamsters, Airline Division, (IBT), filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving individuals employed by Pan American World Airways, Inc. (Pan Am) denominated as "Production Supervisors."*/ Said application has been docketed as NMB Case No. R-5165.

At the time the application was received, these individuals were not represented by any labor organization or individual.

During the course of the Board's investigation, issues arose concerning whether the subject personnel were "employees or subordinate officials" within the meaning of the Act. Consequently, the Board ordered that a hearing be held concerning changes in Pan Am's maintenance operations following the merger of National Airlines into Pan Am, and their impact on Production Supervisors, as they affect the Board's findings in Case No. R-4773 (see Background, below). 8 NMB No. 62 (1981).

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*/ Except as otherwise specifically noted herein, use of the term "supervisor" is limited to Production Supervisors.

The hearings were conducted over 53 days between March 2 and October 14, 1981, before Chief Hearing Officer David M. Cohen. Representatives of Pan Am and IBT appeared, participated, and were afforded full opportunity to present their respective positions and evidence, and to examine and cross-examine witnesses. Posthearing and reply briefs were filed by Pan Am and IBT, and a supplemental legal memorandum requested by the Chief Hearing Officer was also filed by each participant.

ISSUES

The issues in this case are (1) whether Production Supervisors are "employees or subordinate officials" within the meaning of the Railway Labor Act, (2) the impact of the merger of Pan Am and National Airlines on Production Supervisors, (3) the impact of certain carrier actions vis-a-vis Line Maintenance and Technical Services Supervisors at Kennedy International Airport, and (4) whether Technical Services Supervisors are employees or subordinate officials" within the meaning of the Act.

BACKGROUND AND CONTENTIONS

This case marks the fourth time that the subject personnel have been involved in a representation case since 1971. The first two cases involved applications of the International Association of Machinists and Aerospace Workers, AFL-CIO, (IAM&AW), seeking to represent Production/Maintenance Supervisors on Pan Am. In NMB File No. C-4087 (5 NMB No. 112 (1973)), hereinafter Pan Am I, and Case No. R-4450 (Letter of February 10, 1975), hereinafter Pan Am II, the Board concluded that these individuals were employees or subordinate officials under the Act, and that they constituted a proper class or craft. Following elections, both applications were dismissed after less than a majority of the employees in the craft or class had cast valid ballots.

In 1977, the IBT filed an application to represent Production/Maintenance Supervisors. After a 46-day hearing and a 12-day supplemental hearing in Case No. R-4773, hereinafter Pan Am III, the Board concluded that Production Supervisors were employees or subordinate officials who constituted a craft or class for purposes of representation. Certain other job classifications were deemed not to be those of employees or subordinate officials, including Line Maintenance Supervisors. The Board declined to order an election among Production Supervisors because of the impending merger with National Airlines, since it had determined only six months earlier that similar personnel on National were not within the jurisdiction of the Act, and that it would be necessary to reexamine the entire issue after the merger. National Airlines, 7 NMB No. 42 (1979); Pan American World Airways, 7 NMB No. 95 at p. 190-191 (1980).

Following the filing of a new application in the present case, Pan Am contended that it had made substantial changes in the maintenance operations following the merger, and that Production Supervisors could no longer be considered employees or subordinate officials. IBT contended that no changes had been made, and that an election should be held. During the course of the hearings, IBT urged the Board to discount any changes which had been made because of impermissible motives on the part of Pan Am management which led to some asserted changes. This matter will be discussed in greater detail in the Discussion, below.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 152. Accordingly, the Board finds as follows:

I

Section 201 of the Act, extends all of the provisions of Title I of the Act, except the provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce... and every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service." (emphasis added)

II

Pan American World Airways, Inc. is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181.

III

Section 2, Fourth, of the Act, 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargaining collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for purposes of this Act."

IV

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V

The IBT is a labor organization and representative as defined in Section 1, Sixth, 45 U.S.C. §151, Sixth, and Section 2, Ninth, 45 U.S.C. §152, Ninth, of the Act.

FINDINGS OF FACT

The Board has considered the entire record in this case, including the exhibits, transcripts of the hearings, the three sets of post-hearing briefs, as well as its findings in Case No. R-4773. Upon this record, the Board finds as follows:

I.

A.

Pan American presently operates a world-wide air transportation system, including substantial domestic operations obtained through its merger with National Airlines in 1980. During most of 1980, Pan Am worked to integrate the work forces, stations, and operations of the two airlines into a single system.

In 1980, Pan Am had airline operating revenues of $3.55 billion, and a loss of $247 million. Through the first nine months of 1981, the airline lost an additional $320 million. The number of airline employees fell from 36,160 in December 1979 to 32,259 one year later. In the third quarter of 1981 alone, Pan Am reduced the number of airline personnel by 2.6%. Pan Am has deferred delivery of new aircraft, sold others which have been leased - back, and sold off its headquarters building and hotel subsidiary to raise cash.

Higher operating costs and the recession contributed to a 3.2% decrease in revenue passenger miles in 1980. Increased international competition led to a decrease of 1.5% in Pan Am's share of the market, while domestic market also declined.

B.

Pan Am's maintenance base is located at John F. Kennedy International Airport (JFK) in New York. Its maintenance station at San Francisco has been scaled back since the merger. Pan Am continues to operate National's maintenance base at Miami.

At JFK, the Worldport passenger terminal has been redesignated as a line maintenance station. Where its operations before the merger were primarily for international flights with long turn around times or lay-overs of wide-body aircraft, the Worldport now also handles domestic Boeing 727 aircraft, which arrive and depart on a more rapid schedule. Former National line maintenance personnel work with Pan Am personnel at the Worldport.

In recognition of the redesignation of the Worldport, Production Supervisors at the Worldport were redesignated Line Maintenance Supervisors in 1980. Although it appears that some notification of this action was provided to these personnel, it is not clear that all such personnel were made aware of the change or provided with a new job description. The Board has previously determined that Line Maintenance Supervisors are not employees or subordinate officials within the meaning of the Act. Pan American World Airways, 7 NMB at 190.

Following the merger, Pan Am had more maintenance and other personnel than necessary for its operations. In the fall of 1980, it offered an early retirement program for both rank-and-file and managerial personnel. Company-wide, almost half of those eligible for this program retired. Not all of the supervisors and managers who retired were replaced.

The revelant portion of the Maintenance and Engineering Division (M&E) for this case is organized along the following lines:

Senior Vice President - M&E
Vice President-Maintenance Production
System Director
Director
Manager
Unit Manager
Production Supervisor

Not every supervisor reports to a manager through a unit manager. Maintenance Production is divided into four areas: Aircraft Maintenance, Base Stations, Powerplant Repair, and Component Repair.

II.

Authority to hire, discipline and discharge

Because of various factors, Pan Am has experienced hiring, furloughing, terminations, and early retirements since the merger. Thus, in some areas, Pan Am needed to hire additional cleaners, including some former commissary employers who were rehired as cleaners. At the same time, an early retirement program was put into place in the summer and fall of 1980, in order to reduce the number of employees and eliminate excess personnel. By 1981, economic conditions forced Pan Am to terminate or furlough other employees. The net result has been a reduction of personnel in maintenance, including a reduction in the number of Production Supervisors.

There is no doubt that Production Supervisors hired new employees or rehired laid-off employees (who had no automatic right to be rehired) for Pan Am. Although these employees were pre-screened by employment department personnel and hired subject to a medical examination, the person who conducted the interview and gave the approval to hire was usually a Production Supervisor, not a higher-level official. While the Board finds that supervisors are empowered to hire and have done hiring, we do not rely heavily upon this fact in reaching our conclusions in this case because of the inexplicable practice of having some Production Supervisors who do not use cleaners hire for other work areas which do. The Board is not persuaded that the cleaner position is always used as an entry-level position to mechanic, since mechanical aptitude is not generally a factor in hiring cleaners.

Production Supervisors conduct practical examinations for mechanics seeking to enter specialty shops, and play some role in writing those tests. This work was formerly performed by the WIT Supervisor. The Board's conclusions in Pan Am III with respect to the lack of a role in determining how many mechanics or crew chiefs will be in a crew, and the effect of the TWU collective bargaining agreement, remain largely unchanged.

A major change has occurred in the area of discipline by Production Supervisors. While it remains true that some higher-level managers have not fully delegated the power to impose discipline, changes in managerial personnel have resulted in a far greater emphasis on first-line imposition of discipline. Supervisors are expected to take action as required, including suspension and discharge where warranted. Supervisors have the power to summarily suspend an employee pending a hearing. The Board's conclusions with respect to the rights of employees under the TWU agreement, and Pan Am's guidance for supervisors, remain unchanged from Pan Am III, but do not detract from the finding that supervisors do impose discipline. Even IBT witnesses admitted having taken such actions as docking employees and issuing reprimands without seeking higher approval, and one IBT witness issued a letter rather than suspending an employee whom the manager had ordered suspended. One Production Supervisor demoted a crew chief (see grievance handling, below).

In addition to taking action for major and minor infractions, Production Supervisors are expected to impose discipline as necessary in connection with Pan Am's attendance control program. Supervisors are advised of the cumulative attendance records of the employees they supervise, and are expected to counsel, warn, reprimand, and discipline those with poor records. Supervisors receive some training in this area.

The majority of the witnesses testified that they possess and exercise the authority to discipline employees. Several witnesses indicated that they did not use their authority to impose discipline without notifying higher-level management. In conclusion, the Board finds that Pan Am does not require supervisors to check with managers prior to imposing any form of discipline, that managers inform supervisors of that fact, and that "checking out" ideas with the manager does not indicate that prior managerial approval is given.

Authority to resolve grievances

Another major change has been made in the area of grievance resolution. In negotiations with the TWU, Pan Am developed a fact sheet to be completed by the supervisor and the union steward in a joint effort to settle the grievance. The supervisor's representations of areas of agreement and disagreement bind Pan Am in writing at later steps in the grievance procedure. The record indicates that managers have instructed supervisors to handle grievances rather than relying upon the managers for answers.

One IBT witness testified that he had resolved a grievance in which a crew chief asked to be "held harmless" for certifying the work of his mechanics. The supervisor granted the grievance by removing the crew chief, demoting him to mechanic. This action had the effect of reducing the employee's base pay by over $1600 per year, and the supervisor made the decision to treat the grievance as a resignation without first seeking higher-level approval.

Directing work of subordinates

In negotiations with the TWU, Pan Am increased the number of leadmen significantly and changed their job title to crew chief (except for lead cleaners). Pan Am determined to use its crew chiefs in the same way that National had, i.e., to run the crews. In National Airlines, supra, the Board found that "Leads assign specific tasks to crew members, direct the work, prepare necessary paperwork, and make cost accounting notations on time cards." at 80. In Pan Am III, the Board found that leads did not perform these duties, finding that many supervisors did not utilize leads on a regular basis.

In Pan Am III, the Board found that:

> At JFK, leads play a less important role than at the line stations because of the size and nature of Pan Am's operations there. Each maintenance function has been divided into its basic components, and there are crews assigned to each component. A supervisor directs the work of each crew, and several crews may report to a manager. In addition, there may be several crews performing the same function. Under these circumstances, the Board concludes that the high degree of specialization of work has had the effect of reducing the individual supervisor's authority and discretion, and of increasing his immediate control over the employees. The manager exercises a level of authority which clearly shows that the manager, not the supervisor, is the focal point of managerial control and decision-making.

While Pan Am still maintains a complex and highly specialized maintenance base at JFK, there has been a substantial reduction in the number of supervisors and managers running the operation. For example, between February and September 1981, the number of Production Supervisors in Maintenance Production at JFK fell from 209 to 158 (compared to 239 prior to the merger), while the number of mechanics fell from 1,966 to 1,891 (compared to 2,220 prior to the merger). The number of crew chiefs fell by only one, from 247 to 246, compared to only 153 leads prior to the merger. Comparing pre- and post-merger figures, twenty-five percent fewer supervisors are using sixty percent more crew chiefs to direct the work of fifteen percent fewer mechanics. As the work load of each supervisor has gotten bigger, the crew chief has become correspondingly more important.

Because of the reduction in the number of supervisors and managers, and the practice of grouping several shops under one supervisor's jurisdiction, Pan Am has been forced to place greater reliance on crew chiefs. Six crew chiefs called by Pan Am testified at the hearings that they received the crew's total daily work load and priorities from the supervisor, and that they made the individual assignments to each mechanic. If changes in priority had to be made during the day, crew chiefs could make the necessary assignments.

In addition, crew chiefs testified that they provided training to mechanics, assigned other employees to provide training, prepared much of the paperwork associated with each job, made cost accounting notations on time cards, and certified that work performed by the mechanics was acceptable. Crew chiefs also take attendance, insure that necessary parts and tools are available for mechanics, hold safety meetings, work with other shops and departments, and review aircraft logs. Crew chiefs can spend anywhere from one or two hours a day on crew chief duties to the full day, with the balance spent on mechanical work.

Several IBT witnesses testified that they had been instructed by their managers to make greater use of crew chiefs to direct the crew and make job assignments, but that they had not done so. Even when ordered to use their crew chiefs to lead and direct mechanics, some of these supervisors refused to do so or did so for a very brief period of time. Yet these same witnesses stated that supervisors do not direct the work of subordinates through crew chiefs. The deliberate refusal of a supervisor to exercise his authority in a manner consistent with carrier policy - being insubordinate - does not provide a basis for holding that the authority either does not exist or is never used.

The Board finds that Production Supervisors utilize their crew chiefs to lead and direct the work of the crews. The testimony of the crew chiefs who testified is particularly persuasive, and stands unrebutted by IBT witnesses.

Authority to call overtime

Overtime is divided into two categories: scheduled and unscheduled. Scheduled overtime is planned in advance to meet heavy production requirements or to assure a full crew of mechanics (i.e. to cover days off), and is generally four or eight hours long. Unscheduled overtime is shorter, and covers times when advance scheduling is impractical.

When scheduled overtime is required in maintenance shops, all employees in the shop may be offered the opportunity to work. Due to economic problems facing Pan Am, use of overtime has been greatly restricted. The lack of overtime opportunities has, of course, limited the opportunity for supervisors to call scheduled overtime. The record shows that a number of Pan Am shops are two-shift operations, and that scheduled overtime may be rare since there is already extensive coverage.

In Pan Am III, the Board found that:

> Supervisors exercise only the most limited authority to call overtime, although supervisors must sign time cards to authorize payment for any overtime an employee actually works. In general, supervisors only call unscheduled overtime such as "no lunch," "quick (or easy) hour", or continuation of shift. Supervisors do not call scheduled overtime, either daily or sixth and seventh day.

Supervisors still call unscheduled overtime. In addition, they now also call some scheduled overtime. The Board is persuaded from the testimony regarding unscheduled overtime that it gave too little weight to this factor in Pan Am III, and that unscheduled overtime may be a more important cost item to a carrier than scheduled overtime.

Role in policy and budgetary matters

The Board concluded in Pan Am III that supervisors did not play a significant role in policy and budgetary matters. The record in the present case shows few important changes in the findings of the prior case, and the Board generally incorporates its prior findings into this decision.

However, changes have taken place in several areas. Safety has received greater emphasis at Pan Am. Through a series of safety committees, supervisors are responsible for insuring a safe work place. If a grievance is filed regarding, e.g., exposure to fumes or insufficient illumination, the supervisor must make the necessary arrangements to have Pan Am's workmen's compensation carrier conduct the tests which would confirm or negate the existence of a hazard. If doors and aisles are blocked, or fire extinguishers are missing, or machinery is being used improperly, supervisors are responsible for correcting the problem. If an occupational injury occurs, supervisors are responsible for securing medical assistance, reporting on the cause of the injury and ways of preventing a recurrence, and helping the employee return to work as quickly as possible.

Pan Am has placed greater emphasis on attendance control. Supervisors monitor the attendance of mechanics, and receive monthly computer printouts indicating employee absences. Supervisors are responsible for counselling employees with poor records, and for imposing progressive discipline when required. Pan Am provides form letters for this purpose, but supervisors are free to alter them, or to repeat steps before imposing more severe discipline. Supervisors must also investigate abuses, such as employees leaving the work area without permission, failing to clock out, or failing to report for work. The attendence control program has led to significant reductions in employee absence.

Finally, supervisors are responsible for identifying employees with alcohol problems, and for arranging medical treatment and rehabilitation through an alcohol treatment center. If employees fail to receive this treatment, they are liable for disciplinary action, including dismissal. In such a case, it is the supervisor who gathers the facts and imposes the discipline.

Dealings with outside parties and vendors

The Board reaffirms its conclusions in Pan Am III with respect to the scope of supervisors' dealings with outside parties and vendors, except to note that Pan Am has delegated more authority to Production Supervisors to order parts and tooling without managerial approval.

Benefits and pay of supervisors

Supervisors earn $34,380 - $40,300 per year, with merit the governing factor in determining raises. Supervisors, as well as management employees generally, received a ten percent pay cut as part of Pan Am's strategy to cope with its cash problems.

Mechanics' and crew chiefs' pay is determined in collective bargaining. Mechanics presently have a top rate of $13.79 per hour ($28,600 per year) plus license premiums, and crew chiefs have a rate of $14.63 ($30,430 per year) plus license premiums. Pan Am's unions agreed to a 10% pay cut to assist in resolving the cash problems.

Basic medical, major medical, dental, and vision care benefits are almost identical for TWU-represented employees, and management personnel and supervisors. TWU employees receive slightly less in some areas. Retired management personnel and supervisors receive the same medical coverage as active employees, while TWU employees are subject to certain limits (Medicare is deducted from both). Group life insurance is less expensive for supervisors and management personnel, but is otherwise the same as that provided to TWU employees. Pensions, vacations, holidays, sick days and survivors benefits are virtually identical. Travel privileges are substantially better for supervisors and management personnel than for TWU-represented employees.

III

Line Maintenance Supervisors

In the course of the previous case, the Board determined that Pan Am's Line Maintenance Supervisors were not employees or subordinate officials. With the merger, Pan Am redesignated its Worldport operation as a line maintenance station and redesignated the supervisors at the Worldport.

The evidence adduced in the present case indicates that Worldport Line Maintenance Supervisors cannot be considered employees or subordinate officials. In addition to their duties and responsibilities as they parallel Production Supervisors, the record shows that Line Maintenance Supervisors rely on crew chiefs and leads to a major degree in the performance of their duties. Crew chiefs frequently meeting arriving aircraft ahead of a supervisor; they make individual job assignments; and they perform the same tasks as the supervisor in handling arrivals and departures.

IBT attempted to establish that the Worldport is not an ordinary line station, and it is not in a strict sense. However, the fact that JFK is the carrier's maintenance base does not detract from the essential character of the Worldport as a line station. A Worldport Line Maintenance Supervisor need not be a mechanical jack-of-all-trades, as other Line Maintenance Supervisors are, because the entire resources of JFK are available if needed. But the merger has substantially increased the frequency and the pace of operations, with quick turn-around domestic flights in addition to the more leisurely overnight or long turnaround international flights.

Operations at the San Francisco maintenance base have been substantially reduced, and that station has also been designated as a line maintenance station.

Technical Services Supervisors

Technical Services Supervisors are highly skilled personnel who analyze problems involving engines and aircraft. Some of these supervisors have crews of mechanics under their supervision, while other may be called upon to make emergency trips to places where aircraft are grounded. While on such trips, these supervisors are essentially authorized to do whatever is required to return the aircraft to service.

DISCUSSION

I.

A.

On August 31, 1981, the IBT filed a motion to strike from the record of this case all evidence of acts and events which occurred subsequent to the date of the application, which was not shown to be directly related to the merger of Pan Am and National. The Chief Hearing Officer denied the motion, and IBT filed an appeal with the Board.

IBT urges that Pan Am made changes to the duties and responsibilities of Production Supervisors, not as a result of the merger, but solely to win this case. As evidence of this assertedly improper motive, IBT alleges that counsel for Pan Am gave a speech to managers and directors which indicates an intention to mislead the Board in an attempt to deny the subject personnel their right to organize. The remedy sought is to strike certain evidence from the record, in effect compelling the Board to set aside much of the record because of the carrier's interference with the right to organize.

Pan Am filed a statement in opposition to the IBT motion.

In its post-hearing brief, IBT specified five specific areas where it desired to have evidence stricken: use of Support Requests, timecard procedures, use of crew chiefs, hiring by supervisors, and crew chiefs making job assignments. These areas are asserted not to be the bona fide impact of the merger. In its reply brief, Pan Am once again urged the Board to reject the IBT motion, calling it illogical, inconsistent, unwarranted, and unsupported by the record.

Because of the crucial nature of the issue of improper carrier motive, the Chief Hearing Officer requested that each participant file a legal memorandum concerning what weight and impact the Board should give to Pan Am's alleged motivation to change the status of Production Supervisors to deter union organization, assuming such a motive was found to exist and was deemed unlawful. Such briefs were filed.

B.

Both Pan Am and IBT cite precedents under the National Labor Relations Act in support of their positions. The principal cases are Amber Delivery Service and U-Tote M of Oklahoma. Neither of these cases provides support for the position taken by the IBT.

The National Labor Relations Board in Amber Delivery Service, 250 NLRB 63 (1980), found that the employer had committed various unfair labor practices by, inter alia, changing working conditions of employees in an unlawful attempt to convert them into independent contractors. In 1976, Amber instituted some changes in working conditions. In July 1977, the NLRB found that the employees were not independent contractors and directed an election, whereupon Amber made additional changes and sought reconsideration on that issue. The NLRB found that these later changes were motivated by a desire to thwart the employees' organizing drive.

On petition for enforcement, NLRB v. Amber Delivery Service, 651 F.2d 57 (1st Cir. 1981), the Court stated:

> It is clear that Amber is free, in the sincere and justifiable exercise of business judgment unrelated to its employees' union activity, to convert its workers to independent contractors notwithstanding that such action has the incidental effect of excluding these persons from the Act's coverage. It is equally clear, however, that Amber is not at liberty to effect such a conversion, or attempt to do so, as an artifice or device for depriving its employees of their statutory right to union representation. "The conversion of employees to independent contractor status is an unfair labor practice when motivated by anti-union animus." United Dairy Farmers Coop. Assoc. v. NLRB, 633 F.2d 1054, 1063, (3d Cir. 1980). Accord, e.g., Tonkin Corp. of Calif. v. NLRB, 420 F.2d 495, 498, 73 LRRM 2218 (9th Cir. 1969). Were changes for this sort of reason permissible an employer might forestall union organizing simply by announcing that, if it employees organize, it will convert them into independent contractors - thus leaving them, should the threat prove effective, with the worst of both worlds. "The critical fact," as this court remarked in NLRB v. Kelly U Picerne, Inc., "is the underlying motive for the respondent's change of business practice." 298 F.2d at 898.
>
> We find substantial evidence for the Board's finding that Amber instituted the August 9 changes not for legitimate business reasons but for the purpose of forestalling the drivers' union activities. At the unfair labor practices hearing, Amber's president sought to characterize these changes as a continuation of the lawful decision, reached prior to the advent of union activity, to convert the drivers to owner-operators. But, the Board found that the conversion to owner-opera-

> tor status had been completed in June, at which time no further changes were contemplated; as discussed below, Amber makes no attempt on appeal to justify the changes in terms of business reasons. Rather, we find that Amber's action was undertaken in response to - and in an effort to reverse - the regional director's Decision and Direction of Election issued just eleven days earlier. (cit. and fn. omitted).

The Court went on to recite additional evidence which negated any suggestion that Amber had been motivated by "an exercise of business judgment divorced from union considerations."

In U-Tote M of Oklahoma, 172 NLRB 228 (1968), the NLRB found the employer guilty of an unfair labor practice because independent contractor contracts offered to employees were a sham to prevent union organization. In considering the case on remand, 179 NLRB 829 (1969), the NLRB went further, describing the offer of independent contractor status as having been made for the "sole and express" purpose of defeating organization efforts. The NLRB bargaining order was enforced, sub nom. Fairmont Foods v. NLRB, 80 LRRM 2904 (4th Cir. 1972).

On the record before us, the Board is unable to conclude that Pan Am engaged in a sham for the sole purpose of depriving Production Supervisors of their rights under the Act. The Board finds that Pan Am has made genuine changes in its operations based upon legitimate business reasons, and not as an artifice for the purpose of forestalling union activities. The Board further finds that Pan Am's requirement that Production Supervisors perform certain managerial functions was not a sham, and that it was not imposed for the sole and express purpose of defeating the union.*/

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*/ The Board further notes that the speech relied upon by IBT to support its motion was made to managers and directors, not to Production Supervisors covered by this application. It is therefore questionable whether such a speech, if given, had any unlawful impact upon the Production Supervisors.

C.

Because the Board finds no improper motive by Pan Am, and because the scope of its investigation is not as narrow as that urged by IBT, the motion to strike is denied. Additionally, the Board finds it unnecessary to determine whether or under what conditions it might take action such as that urged by IBT.

Throughout the past decade, Pan Am has consistently argued that its Production Supervisors and other similar employees were not employees or subordinate officials under the Railway Labor Act. In each of the four cases, Pan Am has alleged that supervisors had and exercised certain authority which indicated their managerial status. Although Pan Am failed to persuade the Board that such authority existed and was exercised, it has over that time clearly increased the duties and responsibilities of supervisors. In Pan Am III, in fact, the Board found that some categories of supervisors were not employees or subordinate officials, and that some Production Supervisors exercised managerial authority.

When the Board investigates an issue such as the one presented here, it does not restrict itself to unrealistically narrow and precise questions. Limiting this inquiry to the direct effects of the Pan Am - National merger would be an impossible task. Reasonable people can spend countless hours arguing about which effects are direct or indirect, whether deregulation had any impact, whether the general economic environment is a cause or effect of Pan Am's difficulties, and the role of Pan Am's cash flow problems, among other questions.

It is sufficient for the purposes of this case to note that Pan Am's basic nature has been greatly altered by the acquisition of a domestic system, that it had problems of excess labor, including excess layers of management, even before its traffic and capacity problems became acute, and that increased domestic competition on former National routes would have mandated greater productivity from all Pan Am personnel. Pan Am's actions with respect to its maintenance operations have been consistent in terms of solving these problems.

The Board must examine Pan Am as it finds it during the relevant time frame. Freezing our inquiry at a particular point in time would not serve the purposes of the Act in an era of dynamic change. To close our eyes to the changes being made to save a carrier which has lost half a billion dollars in two years would constitute an abdication of the statutory duty to investigate this application. That many of these changes have had an impact on Production Supervisors is beyond dispute.

II.

The record in this case, over 8500 pages of testimony gathered in 53 days of hearings, builds on the previous cases, particularly the record in Pan Am III.

Part A of the Discussion section in Pan American World Airways, 7 NMB No. 95 (1980) ("Pan Am III"), outlined in some detail the Board's conclusions in Pan American World Airways, 5 NMB 112 (1973) ("Pan Am I") and Pan American World Airways, Case No. R-4450 (1975) ("Pan Am II"). That discussion need not be restated here, but is incorporated by reference.

In Pan Am III, the Board found that some Production Supervisors did hire new employees, but in such small numbers as to be unrepresentative of the entire craft or class; and that internal transfers were controlled primarily by the collective bargaining agreement covering Mechanics and Related employees. The record showed that Production supervisors had little discretion in the area of discipline, and that higher level officials retained most authority over discipline.

The Board further found that Production Supervisors exercised little discretion or authority in resolving grievances.

Lead mechanics were found to be merely working mechanics who did not lead and direct other employees, and even Production Supervisors exercised little authority because of the management structure at Pan Am. The Board found that Production Supervisors had only the most limited authority to call overtime on their own, and had no significant role in policy or budget matters.

The Board concluded that there had been little change in the actual duties and responsibilities of Production Supervisors in Pan Am III from its findings in the earlier two cases, and that Production Supervisors exercised minimal managerial authority. The Board further contrasted the situation at Pan Am with that found on National, where supervisors had been found to exercise managerial authority. However, because of the imminent merger between those two carriers, the Board dismissed the application, stating:

> Upon filing of a new application, the Board will investigate the impact of the merger between Pan Am and National as it affects Production Supervisors. If an election is warranted following completion of the investigation, it will be conducted among the craft or class on the merged carrier.

III.

In examining the actual duties and responsibilities of Production Supervisors, the Board looks at the totality of the duties performed. In the present case, Pan Am personnel at hierarchal levels above, equal to, and below that of Production Supervisors were called as witnesses. A total of 54 witnesses testified during the hearings, including 32 supervisors and seven crew chiefs. Unlike the original hearings in Pan Am III, the participants in the present case provided a substantial number of the personnel covered by the application as witnesses.

As stated in Pan Am III:

> Although the Board has utilized the entire record in this case, it is apparent that the record of the supplemental hearings deserves the greatest weight in deciding this case. The live testimony of the 31 supervisors called by the Board provides an important resource in determining whether the subject personnel are carrier officials, as claimed by Pan Am, or subordinate officials, as claimed by IBT. While the testimony of top management officials and labor organization representatives is valuable in providing background information, it cannot sup-

plant the testimony of the employees affected by the application.

IV.

The Board concludes that Pan Am has, at the present time, invested its Production Supervisors with a level of authority and responsibility which indicates that they can no longer be considered "employees or subordinate officials" within the meaning of the Railway Labor Act.

The major reduction in the number of supervisors compared to mechanics, combined with changes in higher-level management, has heightened the occasion and need for greater supervisory power. Crew chiefs are being forced to take over greater day-to-day running of the shop as supervisors are given greater responsibilities. Among the factors contributing to the supervisors' work load are an increasing emphasis on attendance control, counselling, and discipline; a more active safety program involving supervisors; combining of multiple shops under a single supervisor; assigning fewer supervisors to the second and third shifts than previously; handling new equipment from the former National fleet; and the increased role in the grievance procedure.

The Board's Findings of Fact spell out those areas where change has occurred, and it is unnecessary to restate the specifics of those changes. The Board finds the changes to be significant, and the record clearly indicates that the factors which led to the Board's conclusions in Pan Am III with respect to Production Supervisors no longer prevail.

V.

Based upon the Board's findings above, it is unnecessary for us to determine whether those Production Supervisors at the JFK Worldport whose job titles were changed to Line Maintenance Supervisor were given new job titles solely to exclude them from the scope of the application. Because (1) the Board has previously determined in Pan Am III that Line Maintenance Supervisors are not within the jurisdiction of the Act, (2) the record of the present case clearly supports that conclusion with respect to these supervisors, and (3) the Board has determined that Production Supervisors are not employees or subordinate officials, these supervisors would not be subject to the Act under either job title.

Further, the Board concludes that the Technical Services Supervisor, whose duties and responsibilities fall within the same range as those of Production and Line Maintenance Supervisors, are not employees or subordinate officials.

CONCLUSION

Based upon the record in this case, and the findings above, the Board concludes that Production Supervisors on Pan American are not employees or subordinate officials within the meaning of the Railway Labor Act.

The application of the International Brotherhood of Teamsters is hereby dismissed.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

James McCall, Esq.
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RKQ/dcb

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 74

In the matter of the Application of	CASE NO. R-5292
UNITED TRANSPORTATION UNION	FINDINGS UPON INVESTIGATION
alleging a representation dispute involving employees of	February 16, 1982
MARYLAND & PENNSYLVANIA RAILROAD COMPANY	

On January 6, 1982, the United Transportation Union (UTU) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving Electricians, employees of the Maryland & Pennsylvania Railroad Company (M&PRR). Said application has been docketed as NMB Case No. R-5292.

At the time the application was filed, these employees were represented by the Brotherhood of Ma&Pa Shop Crafts Union of America (Brotherhood), pursuant to its certification in Case No. R-5016. 7 NMB No. 76 (1979).

The Board assigned Board representative John B. Willits to investigate. During the course of the investigation, issues arose concerning the existence of the craft or class, whether there are any eligible voters, and whether the Brotherhood disclaimed interest in the case.

On January 25, 1982, the Board found a dispute to exist and ordered a mail ballot election. Ballots were scheduled to be counted on February 16, 1982, and were subsequently impounded pending resolution of the issues raised.

ISSUES

1. Does the craft or class of Electricians exist on the M&PRR.

2. If so, is Charles Bradney part of the craft or class, and is he eligible to vote.

3. Does the Brotherhood have an interest in this case.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 1, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §151. Accordingly, the Board finds as follows:

I

Section 2, Fourth of the Act, 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

II

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate representation disputes and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is "authorized to...utilize any...appropriate method of ascertaining the names of [the] duly designated and authorized representatives."

III

The Maryland & Pennsylvania Railroad is a common carrier as defined by Section 1, First of the Railway Labor Act, 45 U.S.C. §152, First.

IV

UTU and the Brotherhood are labor organizations and representatives as defined in Section 1, Sixth of the Act, 45 U.S.C. §151, Sixth.

FINDINGS OF FACT

I

The Brotherhood was certified to represent Electricians, Carmen, and Machinists of the M&PRR in NMB Case Nos. R-4993, R-5016, and R-5017, respectively.

On December 20, 1979, after the Brotherhood had been certified to represent Electricians and Carmen, but before it had been certified to represent Machinists, the Brotherhood and the M&PRR signed a collective bargaining agreement covering Mechanics, Car Inspectors, and Hostlers (who were subject of a certification in Case No. R-4994, and are not involved in the present dispute). At the time, the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW) was the representative of the Machinists.

The agreement was signed by William J. Partington, Vice President and General Manager, for the carrier and Charles F. Bradney, President, for the Brotherhood. Although the agreement covers Carmen and Machinists, it does not cover electricians. However, machinists are required to perform electrician work.

II

In Case No. R-4993, Bradney was the only eligible voter. There was no dispute by any party or the carrier that Bradney was part of the craft or class of Electricians, and the Board's records do not disclose that the issue of craft or class was even raised.

In response to the Board's docketing letter, Partington advised that there was one electrician. At the investigation, Partington represented the carrier and Bradney and Vice President John Morthland represented the Brotherhood.

The investigation was conducted by Board Representative John B. Willits.

Subsequently, Partington was succeeded by J.D. Kostishack as Vice President and General Manager.

III

The Brotherhood's officers are Bradney, Morthland, and Albert Richards, the Steward. The Brotherhood represented a total of five shop craft employees in the three crafts or classes (1 electrician, 2 mechanics, and 2 carmen) prior to the filing by UTU in Case No. R-5285 for Carmen and the present case. Both Carmen voted for UTU in Case No. R-5285, and UTU was certified to represent that craft or class on February 16, 1982. Therefore, all three remaining shop craft employees are officers of the Brotherhood.

In March and April 1981, Bradney was on furlough. Although not required to pay his $10 monthly union dues, he was obligated to pay fifty cents per month to maintain his membership, upon recall. Bradney therefore owed the Brotherhood $1 upon his recall in May 1981. He paid his regular $10 monthly dues when he returned to work, but not the $1.

On November 12, 1981, the Brotherhood notified the M&PRR that Bradney was in arrears. The letter was signed by Richards and Morthland. On November 18, 1981, the carrier terminated Bradney for failing to remain a member in good standing of the Brotherhood, as required by the agreement.

Following docketing of Case No. R-5292, Bradney filed a letter with the Board on behalf of the Brotherhood, disclaiming any interest in representing Carmen, Electricians, or Machinists. The Board found a dispute to exist, and ordered an election with only UTU on the ballot. M&PRR then advised the Board that it objected to this disclaimer on the ground that the Brotherhood did not consider Bradney an officer of the union.

According to Morthland and Richards, Bradney has no authority to speak for the Brotherhood. However, no official proceedings have been instituted to remove Bradney from office, and no new president has been elected.

IV

During the present investigation, M&PRR has taken the position that it has no electricians, and has never had electricians. It asserts that electrical work is performed by machinists who are required to be able to perform such work and perform FRA inspections.

V

On January 13, 1982, Bradney filed suit in the United States District Court for the Western District of Pennsylvania alleging wrongful discharge and seeking damages and restoration of his seniority. (He was on furlough the time of his termination.) The complaint alleges that Bradney paid his arrearage in September 1981. Bradney v. Maryland & Pennsylvania RR Co., Civil Action No. 82-0062 (W.D. Pa.).

DISCUSSION

I

In 1979, both carrier and Brotherhood representatives agreed that Bradney was an electrician, and the Board conducted an election. The Brotherhood was certified as the representative of the craft or class of Electricians.

Board representative Willits investigated both that case and the present case. The only change in a little over two years is the fact that the new management now asserts that there have never been any electricians on the M&PRR.

In the absence of any evidence that Bradney was assigned to a new job, or that his job changed, the Board concludes that the job of electrician existed on the M&PRR at least until the date of Bradney's termination. Therefore, the craft or class of Electricians exists on this carrier for purposes of this case.

II

Bradney, as the sole electrician, was a member of the craft or class at the time he was terminated.

Section 1206.6 of the Board's Rules, 29 C.F.R. Part 1206, provides:

> §1206.6 Eligibility of dismissed employees to vote.
>
> Dismissed employees whose requests for reinstatement account of wrongful dismissal are pending before proper authorities, which includes the National Railroad Adjustment Board or other appropriate adjustment board, are eligible to participate in elections among the craft or class of employees in which they are employed at time of dismissal. This does not include dismissed employees whose guilt has been determined, and who are seeking reinstatement on a leniency basis.

Section 5.304 of the Representation Manual further provides:

> Discharged Employees
>
> Ordinarily, discharged or terminated employees shall not be considered eligible unless the discharge is being appealed through the applicable grievance procedure or an action for reinstatement has been filed before a court of competent jurisdiction. An individual shall not be considered eligible if the grievance or court action has been finally acted upon and the discharge has been upheld prior to the count of ballots (see NMB Rules, Part 1206.6).

On the basis of his pending lawsuit, Bradney is an eligible voter in this case. See also, Air Canada v. NMB, 478 F. Supp. 615 (S.D.N.Y. 1979), 107 LRRM 2028 (S.D.N.Y. 1980), aff'd w/o op. 107 LRRM 2049 (2nd Cir. 1981), cert. denied 108 LRRM 2923 (1981).

III

Since, by admission of the steward and treasurer, Bradney has never been officially removed from his position, the Board finds that he is qualified to act for the Brotherhood, and to disclaim interest in this case. Therefore, the Brotherhood was properly omitted from the ballot.

CONCLUSION

The Board finds that the craft or class of Electricians exists on the M&PRR, that Charles Bradney is a member of that craft or class and an eligible voter in this case, and that the Brotherhood has disclaimed interest in the election.

Ballots previously impounded will be counted forthwith.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. J. D. Kostishack
Mr. Charles Bradney
Mr. Albert Richards
Mr. Fred A. Hardin
Mr. Wayne A. Adamson

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 75

In the matter of the : CASE NO. R-5265
REPRESENTATION OF EMPLOYEES : DISMISSAL
of : February 17, 1982
DELPRO CORP.
Subordinate Officials in the Maintenance of Equipment Department

The services of the National Mediation Board were invoked by the Brotherhood of Railway, Airline and Steamship Clerks-American Railway Supervisors Association Division (BRAC-ARSA-Div.) on September 16, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Subordinate Officials in the Maintenance of Equipment Department", employees of Delpro Corp.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representatives Samuel J. Cognata and John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Subordinate Officials in the Maintenance of Equipment Department, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	BRAC-ARSA Div.	Number of Employees Eligible
Subordinate Officials in the Maintenance of Equipment Department	4	43

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 76

In the matter of the : CASE NO. R-5290
REPRESENTATION OF EMPLOYEES : DISMISSAL
of : February 23, 1982
METRO AIRLINES :
Drivers :

The services of the National Mediation Board were invoked by the Transport Workers Union of America, AFL-CIO on December 14, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Drivers", employees of Metro Airlines.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Maurice A. Parker to investigate.

FINDINGS

The investigation established that the duties of the subject employees consist of driving the carrier's passengers to and from aircraft. Such work is traditionally deemed part of the craft or class of Passenger Service Employees. See, e.g., Security '76, 5 NMB 234 (1976); British Airways, Inc., 7 NMB No. 237 (1980).

On that basis, drivers will be deemed part of the craft or class of Passenger Service Employees presently under investigation in Case No. R-5288. Therefore, the National Mediation Board hereby dismisses the application and closes its files in NMB Case No. R-5290 subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 77

In the matter of the
REPRESENTATION OF EMPLOYEES
of
MARYLAND & PENNSYLVANIA
RAILROAD COMPANY
Electricians

CASE NO. R-5292
CERTIFICATION
February 23, 1982

The services of the National Mediation Board were invoked by the United Transportation Union (UTU), on January 6, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Electricians", employees of the Maryland & Pennsylvania Railroad Company.

At the time this application was received, these employees were represented by the Brotherhood of Ma&Pa Shop Crafts Union of America, pursuant to its certification in Case No. R-5016. Subsequently, the Brotherhood of Ma&Pa Shop Crafts Union of America disclaimed interest in the election.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Electricians, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	UTU	Number of Employees Eligible
Electricians	1	1

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the United Transportation Union, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Electricians, employees of the Maryland & Pennsylvania Railroad Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 78

In the Matter of the Application of	CASE NO. R-5175
INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO	FINDINGS UPON INVESTIGATION
	February 23, 1982
alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act	
involving employees of	
AEROVIAS VENEZOLANAS (AVENSA)	

On December 30, 1980, the International Association of Machinists and Aerospace Workers, AFL-CIO filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving "Office Clerical Employees" of Aerovias Venezolanas, S.A. (Avensa). Said application was docketed as NMB Case No. R-5175.

During the course of the Board's investigation the issue arose as to whether the employees in question were employed by Avensa or by Venezolana International Airways (Viasa). Currently, the IAM represents Office, Clerical, Fleet and Passenger Service Employees on Viasa pursuant to Board certification in NMB Case No. R-4052 (1969). Further investigation revealed that the subject employees were paid by Viasa and were covered by Viasa's group insurance plan.

The Board issued an ORDER TO SHOW CAUSE on January 11, 1982, to the IAM, Avensa, and Viasa, as to why the Board should not "deem the subject employees to be employee's of Viasa within the certification in Case No. R-4052."

The only response received was from the IAM who stated that they had no objection to an accretion election. Neither Avensa nor Viasa responded.

Based upon its investigation the Board finds a dispute to exist among the craft or class of Office, Clerical, Employees on Avensa. The Board hereby orders an election to be held among said employees to determine if they shall be accreted to the craft or class of Office Clerical Fleet and Passenger Service Employees on Viasa.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. W. W. Winpisinger
Mr. William Scheri
Mr. Oscar Bustillo
Mr. Henry L. Boulton
Mr. Charles H. Callahan

RKQ/mja

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 79

In the matter of the
Application of the

TRANSPORT WORKERS UNION OF
AMERICA , AFL-CIO

alleging a representation dispute pursuant to Section 2,
Ninth, of the Railway Labor
Act

involving employees of

UNITED AIRLINES, INC.

FILE NO. CR-5034

FINDINGS UPON
INVESTIGATION-
DISMISSAL

February 23, 1982

On August 12, 1980, the Transport Workers Union of America, AFL-CIO (TWU), filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving "Flight Operations Instructors, Flight Simulator/Standards Instructors, and Emergency Procedures Instructors", employed by United Airlines, Inc. Said application has been assigned NMB File No. CR-5034.

During the course of the Board's investigation, issues arose concerning whether these employees constitute a separate and distinct craft or class or should be deemed an accretion to the craft or class of "Flight Instructors." In United Airlines, Inc., 4 NMB 47 (1964), the Flight Instructors were found to constitute a separate craft or class. An election was held and the Air Line Pilots Association (ALPA) was certified as their representative. NMB Case No. R-3806.

On January 21, 1981, the Board issued an Order to Show Cause to United, TWU, and ALPA as to why a hearing should not be held to determine whether the subject employees should be accreted to the class or craft or Flight Instructors. 8 NMB No. 67 (1981).

On March 11, 1981, the Board ordered that a hearing be held in this case. 9 NMB No. 92 (1981). The hearing commenced in Washington, D.C., on September 14, 1981, before Hearing Officer Roland Watkins. Additional hearings were held on September 15 and 16, 1981. Representatives of TWU, ALPA and United appeared, participated, and were afforded full opportunity to present their respective positions and evidence, and to examine and cross-examine witnesses. Post hearing briefs were filed by TWU, ALPA and the Carrier. On September 4, 1981, Hearing Officer Watkins conducted an on-site investigation of the United Airlines Flight Training Center located at Stapleton International Airport in Denver, Colorado.

ISSUES

On the basis of the Board's investigation and hearing in this case, issues are as follows:

1. Whether the subject personnel in NMB File No. CR-5034, who are Flight Operations Instructors, Flight Standards Instructors, and Emergency Procedures Instructors, are employees or subordinate officials within the meaning of the Act;

2. And if so, whether the subject personnel constitute proper craft or class; or whether the subject personnel should be deemed an accretion to the craft or class of Flight Instructors originally certified in NMB Case No. R-3806.

CONTENTIONS

TWU contends that the Flight Operations Instructor, Flight Standards Instructor, and Emergency Procedures Instructor are employees or subordinate officials and constitute a proper craft or class. ALPA chose not to state a position regarding the employee status of the personnel covered in TWU's application. ALPA asserts that an accretion determination is inappropriate because

ALPA, TWU and the Carrier all agree that there should be no accretion and the circumstances do not warrant a determination of accretion. Furthermore, ALPA contends that the evidence does not support an accretion determination because 1) the functions, duties and responsibilities of the different groups of instructors are dissimilar 2) there is no community of interest, and 3) the history of established voluntary association supports maintaining the Flight Instructors as a separate craft or class.

United contends that the Flight Operations Instructor, Flight Standards Instructor and Emergency Procedures Instructor are management employees and, as such, are not subject to the Act. Assuming, arguendo, that the Flight Operations Instructor, Flight Standards Instructor and Emergency Procedures Instructor are employees or subordinate officials, the Carrier asserts that these individuals should not be accreted to the Flight Instructors craft or class.

BACKGROUND

In NMB Case No. R-3306, ALPA alleged the existence of a representation dispute involving United's Flight Instructors. A hearing was held after which the Board found that the Flight Instructors (FI's) were employees or subordinate officials. 4 NMB 30 (1965). The Board, however, stated that the conclusion regarding the status of the FI's should not be construed as a craft or class determination.

Another hearing was held to determine the appropriate craft or class for representation purposes. United argued that the craft or class should consist of Flight Instructors, Flight Simulator Instructors, Flight Operations Instructors and Emergency Procedures Instructors. ALPA argued that the Flight Instructors were separate and distinct in function and operation from the Carrier's other Flight Training Personnel and should thus be classified as a separate craft or class, or in the alternative, as members of the flight deck crew craft or class.

The Board found that Emergency Procedures Instructors, Flight Operation Instructors, and Flight Simulator Instructors all function on the "class room level", while Flight Instructors function on an "operational level." The most obvious distinction between the Flight Instructors and the others was the "environment in which [Flight Instructors] conduct[ed] their training." Flight Instructors operated aloft, while the other instructors taught exclusively on the ground. The Board found that this fact significantly affected the Flight Instructor's working hours, in that their hours were FI being dependent upon the availability of aircraft, whereas the other instructors worked an eight hour day, five days a week. The Board concluded that the Flight Instructors constituted a separate and distinct craft or class.

FINDING OF LAW

Determination of the issues here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§152. Accordingly, the Board finds as follows:

I

Section 201 of the Act, extends all of the provisions of Title I of the Act, except the provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce...and every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner of rendition of his service."

II

United Airlines, Inc., is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181.

III

Section 2, Fourth, of the Act, 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

IV

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V

ALPA and TWU are labor organizations and representatives as defined in Section 1, Sixth, 45 U.S.C. §151, Sixth, and Section 2, Ninth, 45 U.S.C. §152, Ninth, of the Act.

FINDINGS OF FACT

The Board has considered the entire record in this case, including the transcript of the hearing, all exhibits, the post hearing briefs submitted by the Carrier, ALPA, and TWU, the field investigation of Hearing Officer Watkins and all correspondence and records of the Board relating to this matter. Upon this record, the Board finds as follows:

I

The Carrier maintains its primary flight training facility in Denver, Colorado, at its Flight Training Center (Center). In addition to providing training for the Carrier's flight crews, the Center provides instructions for crews of other airlines, military and Government airmen, and corporation pilots. This training is conducted in classrooms, simulators and aircraft. Much of the training program is dictated by Federal Aviation Regulations (FARs).

The Center, a two-story facility, is situated at Denver's Stapleton Airport. Flight simulators are located on the first floor. Although the Center had a limited number of simulators in 1965, the Carrier presently has two 737 simulators, six 727 simulators, two DC-8 simulators, three DC-10 simulators, and one 747 simulator in operation; two B-767 simulators for training of B-767 crews have been ordered. The Carrier has placed orders for new aircraft (B-767) from the Boeing Company; delivery is scheduled to commence in 1982. The simulators are highly sophisticated equipment and are used for many maneuvers which were formerly performed in the aircraft itself. The second floor contains thirty-six classrooms, fifteen briefing rooms as well as various rooms for self-study.

Although numerous training programs are conducted at the Center, the majority of the facility is used to provide New Hire Pilot Training, initial First Officer and Captain Training, transition training, recurrent training, and initial and recurrent emergency procedures training. It is the duty of the Flight Instructor, Flight Operations Instructor, Flight Standards Instructor, and Emergency Procedures Instructor to provide this training.

II

The duties and qualifications of the Flight Operations Instructor (FOI) are described by the Carrier as follows:

> FLIGHT OPERATIONS INSTRUCTOR: Instructs Captains, First Officers and Second Officers in all phases of ground training, including classroom, training devices and simulators; instructs Second Officers in the performance of their flight duties in the simulator and airplane. Evaluates ground training progress of all flight crew members; evaluates the

progress of Second Officers in simulator and airplane training. Counsels flight crew members as required to enhance training effectiveness and recommends appropriate action. Maintains familiarity with line operations by functioning as observer member of the crew on scheduled flights. Maintains flight engineer proficiency in company simulators' aircraft by performing Second Officer duties on training and check flights and demonstrates proficiency through appropriate checks. Functions as proficiency check/training Second Officer and Flight Engineer check airman, and may function as FAA Examiner when so designated by the FAA. Assists in the preparation of course material and acceptance-testing of training devices, including simulators.

Education: Four years of college training or equivalent general knowledge obtained through experience or other training.

Experience: Flight Operations Instructor-Two years in the field of one or more of the subjects to be taught. At least one year of instructional experience is desired. Must have successfully passed FAA flight engineer certificate written examination.

Staff Flight Operations Instructor- Four years successful company experience as a Flight Operations Instructor. Demonstrated ability to assist in preparation of course material and/or acceptance testing of training devices, including simulators. Must hold a valid flight engineer certificate and be designated as a Flight Engineer Check Airman for entry into classification.

FOI does not hire, resolve grievances, approve overtime, or play a role in setting manpower requirements. He does not provide any input in the preparation of the budget. FOI does not have any employees under his supervision.

Over 90% of the FOI's have a commercial pilot license, and the Carrier has required such a license for the last seven years. The FOI can perform in actual commercial operations for United as a second officer and has done so in the past. They must complete an FAA Class II physical, which permits the individual to operate in the capacity of a flight engineer or pilot second in command, and undergo an annual Company physical. They undergo annual proficiency training and proficiency checks and must complete the same transition course as second officers. FOI's are required to maintain line proficiency by flying as observers on at least three United segments per quarters. FOI's are divided into the following groups: (1) the B-737 and B-747 programs; (2) B-727 program; and (3) the DC-8 and DC-10 programs.

III

The duties and qualifications of the Emergency Procedures Instructor (EPI) are described by the Carrier as follows:

> EMERGENCY PROCEDURES INSTRUCTOR - Instructs air crew members in the emergency procedures programs as applicable to their training facility including initial, recurrent and requalification training for pilots and flight attendants, initial and recurrent ditching procedures, inertial navigation system and dead reckoning navigation for pilots. May conduct the above training and other special programs for contracting airlines and corporate jet operators, firemen and crash rescue personnel.
>
> Education: Four years of college training or equivalent general knowledge obtained through experience and/or training.
>
> Experience: Emergency Procedures Instructor-B-The equivalent of one year successful company experience in positions providing general knowledge in instructing, safety methods or as a flight/inflight crew member.

> Emergency Procedures Instructor-A - Two years' successful experience as Emergency Procedures Instructor-B or two years of equivalent outside experience directly related to the subjects taught.

All of the Carrier's EPI's are in the "A" level described above. EPI's do not hire, discharge, resolve grievances, approve overtime, and set manpower requirements. They do not supervise any employees. There are approximately 18 EPI's situated at three locations: San Francisco, Denver and Chicago.

I7

United has 23 Flight Standard Instructors (FSI's) who report to three Flight Operations Managers-Flight Standards. Their duties are described as follows:

> FLIGHT STANDARDS INSTRUCTOR: Instructs and evaluates UA (United Airlines) and contract flight crews in proficiency checks and proficiency training programs. Conducts briefing and debriefing for the purpose of developing and maintaining a high level of proficiency. Conducts CAT II recurrent briefing. Explains and supports company operating procedures and policy. Serves as fill-in crew member (Captain, First Officer or Second Officer) on proficiency checks, proficiency training and rating rides. Participates in developing, implementing and conducting specialty programs, i.e., wind shear, LOFT, gross weight accelerated stops, etc. May serve as fill-in First Officer on contract aircraft training flights.

FSI's perform simulator fill-in duty in any of the three cockpit crew member positions when necessary for proficiency checks, proficiency training, other training sessions or checks. They remain current in two airplane types and maintain line proficiency as observer members of the crew on 16 United segments per year. FSI's require the same training on the airplane as Flight Instructors

(FI's) or FOI's as far as going through the training course. They, like FI's and FOI's, must be familiar with the cockpit. Many times, the functions of FSI's are similar to those of FI's and FOI's.

FSI's do not supervise any employees, resolve grievances, approve overtime, hire or discharge employees.

V

Currently, United has 63 individuals employed as Flight Instructors. FI's, who report to three Flight Training Managers, are divided into the following sections: (1) the B-737 and B-747 programs, (2) the B-727 program, and (3) the DC-10 and DC-8 programs. The duties of the FI are described by the Carrier as follows:

> The Flight Operations Training Department employs a grading system that uses satisfactory (S), unsatisfactory (U) and end level proficiency S . It is the Flight Instructor's responsibility to apply this system to his trainees. He must keep a daily record of grades as to each maneuver a trainee is required to master in the course of his training, either in the simulator or in the airplane. This daily record must show a "Final Grade" of S , indicating satisfactory completion of training on each item required. The record of daily grades is maintained by the Flight Instructor with the knowledge of the trainee. Upon completion of training, it is returned to the pilot at his domicile. At the completion of each Transition or Requalification training program, the Flight Instructor certifies that the training has progressed successfully through the flight training program and that the pilot has satisfactorily performed all maneuvers. The flight instructor further certifies that the trainee is considered competent to demonstrate proficiency for the certificate involved. If the trainee has completed a First Officer training program, the Flight Instructor, in his role as an FAA

designated check airman, also certifies that the trainee's knowledge of the equipment and ability to handle it is such that he is considered qualified for assignment as a First Officer on the type of aircraft on which he is trained in scheduled airline operations.

VI

The roles of the FI, FOI, EPI, and FSI in the Carrier's training operations are best described by reviewing the various types of training programs.

New Hire Pilot Training

Training for the newly hired pilot is conducted by the FOI. Newly hired pilots are trained to be Second Officers. Upon arrival at the facility, the pilot is greeted by the FOI. The first part of the training consists of about sixty hours of "self-study" utilizing visual and documentary aids. Specifically, he goes through an indoctrination program that covers basic meteorology, air dynamics, and company policies and procedures. This is acomplished through the use of a computer tape. The program allows the pilot to move at his own pace; his program, however, is monitored by the assigned FOI.

Next, the pilot undergoes a flight engineer training course conducted in the classroom. Upon completion of this segment, the pilot is given fourteen hours of simulator training followed by short training in the aircraft itself under the guidance of the FOI. Sometime before he enters the simulator, the pilot undergoes an emergency procedure course, which is conducted by the EPI; at this end of the four hour course, the pilot is evaluated by the EPI.

Transition Training

Transition training occurs whenever a pilot transfers from type of aircraft flown on the line to another. In this case, the entire crew is trained together. FAR requires that training be conducted using the "crew coordination" concept which is explained as follows:

> The certificate holder shall standardize procedures for each flight crew function to the extent that each flight crew member knows the functions for which he is responsible and the relation of those functions to the functions of the other flight crew members.

United uses two types of simulators-those approved for landing capability and those not approved for landing capability. Simulators go through a unique approach process outlined in the FAR's. Approval of a simulator for landing maneuvers enables United to use that simulator for landing proficiency training and requalification and certification in lieu of flying in an actual airplane.

Regardless of which type of simulator is used, the first two weeks of training are the same. The FOI greets the crew upon its arrival at the Center and gives them two weeks of ground training concerning the aircraft. At the end of this instruction, the pilot crew, together with the FOI, proceed to the simulator where they are joined by the FI.

In those instances in which a simulator approved for landing capability is used, the FI gives the Captain and First Officer about nine simulator periods of instruction. The FOI is also in the simulator providing flight instruction to the Second Officer. Such instruction takes two weeks. The Captain's performance in the simulator is then evaluated by the Flight Standards Manager and an FAA check airman. Later the FI and FOI give the crew four hours of "Line Oriented Flight Training" (LOFT) in the simulator. LOFT consists of a full two hours normal line flight (from one point to another) plus another flight from one point to another during which malfunctions are programmed to occur. These malfunctions are programmed by the FI and FOI. Most of the time, LOFT is conducted without a full crew and the FOI is performing the duties of the Second Officer. At the end, the crew returns to their domicile and at the end of twenty-five hours of normal line flying with a Flight Manager checking his performance ("shotgunning"), the Captain receives his permanent air transport rating (ATR). "Shotguns" means that the Flight Manager accompanies the Captain for twenty-five hours of flying; the manager sits in the seat opposite the pilot and checks his performance. An FAA representative is involved in a portion of that twenty five hours.

If a simulator not approved for landing capability is used, the simulator training generally consist of about seven 4 hour periods followed by two flights lasting four hours each in the actual aircraft. During these flights, the FI would be pilot in command and the FOI would be responsible for either manning and flying the flight engineer station or instructing a second officer trainee at that position.

At the completion of the simulator and actual flight training phases, the performance of the crew is checked. In both instances, the Flight Standards Manager and an FAA Check Airman checks the performance of the Captain. The FI checks the First Officer and the FOI checks the Second Officer. The crew then returns to their domicile where a Flight Manager "shotguns" the Captain for twenty-five hours of regular line flying.

Recurrent Training

Recurrent training consists of two parts: the first part is the proficiency check, which is given once a year, and the second part is proficiency training which is conducted once a year at six months intervals following the proficiency check. Appendix F of FAR 121 outlines the items that every pilot in command must be checked on twice a year and every pilot second in command must be checked on once a year. United checks the second officer or the flight engineer also. This part commences with a briefing conducted by the FSI and then a one and one-half hour warm-up in the flight simulator during which time the maneuvers that the individual or the crew will be asked to perform the next day are reviewed. The briefing is performed in the classroom. Part of the check is an oral examination which is usually conducted in the classroom before the simulator portion. The maneuvers are conducted by the Flight Standards Manager.

Flight Attendants have recurrent training which is conducted by the EPI and deals only with emergency procedures. Such training is conducted at the Carrier's facilities in Denver, San Francisco or Chicago.

Requalification Training

Usually, requalification training is a shorter version of transition training. The type of requalification courses have been defined and approved by the FAA. They are compiled in a flight operations training manual. The type of requalification course an individual must undergo depends upon the period of inactivity. In the case of a very short period of inactivity, an FOI would conduct the requalification course. In those instances in which the pilot has been inactive for a long period, he might have to complete a transition course.

Requalification training generally consists of a proficiency check. In the case of first officers and seconds in command, the FI will go through a proficiency check and then evaluates the individual's performance. The pilot in command may be required to perform one additional approach and one additional takeoff on his proficiency check. With the second officer, the FOI will give a check ride which is a proficiency check.

Emergency Procedures Training

This training consists primarily of training in such matters as "ditching", emergency evacuation and first aid. EPI's conduct this training in classrooms at the Carrier's facilities in Denver, San Francisco, Chicago, and Honolulu. In the case of newly hired pilots, emergency procedures training is given during this period of classroom training. Individuals going through their initial training as flight attendants receive emergency procedures training at either Denver, San Francisco or Chicago. Only recurrent training for the flight attendants is conducted at the Honolulu facility.

VII

FI's, FOI's, and EPI's offices are located in the same area of the first floor. FSI's offices are located on the second floor. Responsibility for planning and assigning work to all of the instructors is now the responsibility of the scheduling department.

DISCUSSION

I

FOI's EPI's and FSI's do not possess the authority to hire, discharge or discipline any employees. They do not have any employees under their supervision. Several factors were enunciated by the Board in Frontier Airlines, Inc., 7 NMB No. 43 (1979), which must be considered in determining whether individuals are employees or subordinate officials within the meaning of the Act:

> The evaluative criteria used to determine the status of employees or subordinate officials who do not possess the authority to employ, discharge, or discipline other personnel include, but are not limited to the following (1) the degree of independent judgment in performing day-to-day duties; (2) a role in the development of carrier policy; (3) participation in formulating the budget; and (4) authority to bind the Carrier in major dealings with outside parties. In connection with the exercise of independent judgment, the Board considers whether the incumbents execute their duties and responsibilities without any immediate supervision or guidance and/or whether they direct the allocation of substantial carrier resources in completing assigned tasks. The determination regarding the development of carrier policy is dependent upon whether this role is limited to that of an expert or resource person rendering resource information or recommendations, or whether it extends beyond this to the point of active participation in the ultimate determination as to what the policy, in fact, will be. In considering participation in budget formulation, the Board assesses the actual authority to formulate or to influence effectively the formulation of the budget. Other factors which may be considered include the general

> staffing and personnel policies applicable to the positions under consideration, as well as comparative employment benefits and compensation considerations. It should be appropriately emphasized, however, that all the above factors are considered cumulatively by the Board in determining whether the personnel in question are "employees or subordinate officials.

In the present case, FOI's EPI's, and FSI's do not meet any of the above criteria. Therefore, the Board finds that these individuals are employees or subordinate officials within the meaning of the Act.

II

United's present training operations differs significantly from that detailed in the Determination of Craft or Class, supra. Simulators now play a greater role in the training of the flight crew. Whereas the Carrier had a limited number of simulators in 1965, it now has 12 simulators with orders for two additional ones. It was noted in 1965 that the EPI's and FOI's operated on a "classroom level" while the FI's operated on an "operational level." Presently, this distinction is diminished by the fact that the FOI's play a significant role in the training which is conducted in the aircraft. The present simulators now enable the Carrier to conduct training maneuvers which were once exclusively flight exercises. Since the FOI's and FSI's now fly in the aircraft on certain training programs, the FI is not the only employee who teaches exclusively when the aircraft is airborne.

In 1965, the Board noted that the FOI's, EPI's, and FSI's were schooled "primarily in the realm of theory, while the Flight Instructors go beyond theory and concentrate upon the practical application of the classroom and ground taught skills." This distinction is no longer true when the present circumstances are reviewed. FOI's now exclusively train the Second Officers in not only the classroom but on the aircraft as well.

FOI's are now required to possess commercial pilot licenses; this was not a requirement in 1965. FOI's and FSI's are required to maintain some sort of line proficiency; evidence from the record in 1965 does not show that this was a requirement at that time.

The evidence shows that not only is the FI engaged in "flight training off the ground" but the FSI's and FOI's also. Because the FI functioned only when the aircraft is airborne, the Board found that "his instructional hours must conform to the availability of the aircraft." Present investigation reveals that this is no longer the case. In addition, since the FI and FOI are in the simulator together, the distinction in working hours is no longer true.

The discussion above clearly shows that the present training operations at United differ from the operations which existed in 1965.

III

In determining the existence of a craft or class, the Board considers the functional integration, work related community of interest, work classifications, terms and conditions of employment, and salary and fringe benefits of the employees involved. Air Canada, 6 NMB No. 1216 (1979). The factor of a work related community of interest shall be, and is, an important factor considered in determining whether a craft or class of employees exist in any case; a particular grouping of employees must possess a sufficiently distinct community of interest and common functional characteristics as to ensure their mutuality of interest in the objectives of collective bargaining. Continental Airlines, Inc., 8 NMB Supp A (1977), and Airborne Express, Inc., 9 NMB No. 35 (1981).

In determining the appropriate craft or class of individuals engaged in training operations of this nature, several factors such as the actual duties and responsibilities of the employees involved in training, the nature and setup of the training operations, the environment in which the employees work, qualifications for employment, conditions required to retain the position, and the interaction between the individuals involved in the training must be considered. The role of major equipment such as the simulator, audio-visual machinery, or computers, should be considered also. FI's, EPI's, FOI's, and FSI's perform the important task of training the Carrier's crew. In the case of the FI, FOI and FSI, a common element is the environment in which the training is conducted; all three classifications function in the simulator and in the aircraft. Indeed, these three employees must maintain line proficiency; the three are required to have commercial pilot licenses. FOI must be able to perform the duties of a Second Officer. He works side by side with the FI thus sharing working hours. The FOI even becomes a part of the crew when replacing the Second Officer in the cockpit.

FI's, EPI's, FOI's and FSI's conduct their training at the Center. They share work areas. Each performs a vital role in the Carrier's training operations.

For the above stated reasons, the Board finds that the Emergency Procedures Instructor, Flight Operations Instructor and Flight Standards Instructor do not constitute a craft or class but share a community of interest with the Flight Instructors and any application received regarding these employees should be deemed an accretion to the craft or class of Flight Instructors.

CONCLUSION

Based upon the entire record as reviewed herein, the Board finds that the Emergency Procedures Instructor, the Flight Standards Instructor and the Flight Operations Instructor are employees or subordinate officials within the meaning of the Act. The Board further finds that the Flight Operations Instructor, the Emergency Procedure Instructor, and Flight Standards Instructor do not constitute a craft or class within the meaning of the Railway

Labor Act, as amended but should be accreted to the craft or class of Flight Instructors. Therefore, the application filed by the Transport Workers Union is hereby dismissed without prejudice to a new application filed by the Air Line Pilots Association covering these classifications as an accretion to the craft or class of Flight Instructors and without regard to the time limits set forth in Section 1206.4 of the Board's Rules-29 CFR Part 1206.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

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NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 80

In the Matter of the Application of	CASE NO. R-5297 (FILE NO. CR-5188)
INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO	FINDINGS UPON INVESTIGATION
alleging a representation dispute pursuant to the Railway Labor Act	FEBRUARY 23, 1982
involving	
EASTERN AIRLINES, INC.	

On June 11, 1981, the International Association of Machinists & Aerospace Workers, AFL-CIO (IAM&AW) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving personnel of Eastern Airlines, Inc. (Eastern) denominated as "Drivers." Said application was assigned NMB File No. CR-5188 for purposes of investigation.

At the time the application was filed, the subject personnel were not represented by any organization or individual.

The Board assigned Board representative Charles H. Callahan to investigate. During the course of the investigation, issues arose concerning whether the subject personnel were "employees or subordinate officials" of Eastern.

On August 18, 1981, the Board issued a Notice of Hearing on the issues described below. 8 NMB No. 191 (1981). The hearing was held before Chief Hearing Officer David M. Cohen on December 2-4, 1981, in Washington, D.C. Representatives of IAM&AW and Eastern appeared, participated, and were afforded full opportunity to present their respective positions and evidence, and to examine and cross-examine witnesses. Both pre-hearing and post-hearing briefs were filed by IAM&AW and Eastern.

ISSUES

The issues in this proceeding are:

1. Are the subject personnel "employees" within the meaning of the Railway Labor Act, or are they independent contractors?
2. What standards should the Board apply in determining employee/ independent contractor status?
3. If the subject personnel are found to be employees of the carrier, do they constitute a separate and distinct craft or class, or are they properly included in an existing craft or class?

CONTENTIONS

IAM&AW contends that the subject personnel are employees within the meaning of the Act who are properly part of the crafts or classes currently represented by it.

Eastern contends that the subject personnel are independent contractors, not employees of Eastern, who are not covered by the Act. However, should the Board conclude that drivers are employees, it urges that the Board find that they constitute a separate and distinct craft or class.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 152. Accordingly, the Board finds as follows:

I

Section 201 of the Act, extends all of the provisions of Title I of the Act, except the provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce ...every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service." (emphasis added)

II

Eastern Airlines, Inc. is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181.

III

Section 2, Fourth, of the Act, 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

IV

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V

IAM&AW is a labor organization and representative as defined in Section 1, Sixth, 45 U.S.C. §151, Sixth, and Section 2, Ninth, 45 U.S.C. §152, Ninth, of the Act.

FINDINGS OF FACT

A.

Eastern uses trucks or railroads to pick up and deliver company material in the United States and Canada. Generally, such material is of one or two varities: oversized loads which cannot be flown aboard company aircraft, and bulk loads.*/ The former category includes, in particular, aircraft engines which need to be delivered from the Miami or Atlanta bases to aircraft on the ground (AOG) around the system, and engines which need to be returned to Miami for repair. The latter category includes such items as papergoods, commissary supplies, aircraft interiors, and similar items.

To move this company material, Eastern relies upon truck or rail transportation. Railroads would be used for particularly large shipments or when time is not an important consideration. Trucks would be used in other cases, particularly in AOG situations where Eastern is attempting to return the aircraft to service quickly.

When using trucks, Eastern uses three types of arrangements to move company material. First, since 1967, Eastern has engaged the services of contract drivers (hereinafter "drivers") who are the subject of the IAM&AW application. These drivers are on-call to drive trucks supplied by Eastern. Second, Eastern has signed an agreement with a trucking company. Under this agreement, a vehicle and driver are supplied when called for by Eastern, with a guaranteed minimum of 100,000 miles per year. Third, Eastern employs motor common carriers when there are no drivers available and the trucking company cannot meet Eastern's schedule.

B.

Each driver signs a "Transport Driver Contract" covering his relationship with Eastern. The contract recites Eastern's contention that the Internal Revenue Service and the State of Florida are incorrect in holding that the drivers are "employees" (see Finding of Fact, D, below), and states:

> It is understood and agreed by both Eastern and Driver that for purposes of state and

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*/ Normally, aircraft parts and other company materials are flown on Eastern aircraft when they are small enough to be flown. This case concerns only truck shipments.

federal employment taxes and internal revenue purposes, Eastern shall treat the Driver as an employee. For all other purposes, Eastern shall treat the Driver as an independent contractor and nothing further herein shall be construed to be inconsistent with this relationship or status.

The material terms of the contract further provide as follows:

1. Driver indemnifies Eastern against loss of his personal property.
2. Driver agrees to drive in vehicles supplied by Eastern and to return the vehicles promptly.
3. Driver agrees to comply with applicable laws and to protect the vehicle from misuse or damage.
4. Eastern indemnifies the Driver against all claims or actions for damage or injury to persons or property.
5. Driver is liable for damage resulting from lack of sleep, speeding, intoxication or negligence.
6. Driver will not permit anyone not authorized by Eastern to ride in the vehicle.
7. Driver will obtain authorization from Eastern for vehicle service in excess of $50, and be reimbursed for all servicing.
8. The contract may be terminated on two weeks written notice by either party, or by mutual consent.

The compensation for drivers is fixed by Schedule A of the contract at the following rates:

1. 15 cents per mile in double-driver operations and 22 cents per mile in single-driver operations.

2. $7.50 per hour or $11 per hour for double- or single-driver operations, respectively, for loading or unloading time at each stop.

3. $7.50 or $11 upon return from a trip (which is intended to compensate drivers for time spent unhooking the trailer and returning the tractor to the lessor).

4. $11 per hour for helping load or unload the freight.

5. $15 per flight for air travel.

6. $60 for the first exclusive local trip and $30 for each local or inclusive local trip.

7. $35 per 12-hour period or fraction thereof for lay-overs, plus a hotel room.

8. 32 cents per mile for off-the-road equipment.

9. $11 per hour (maximum 10 hours per day) for breakdown while repairs are being performed on the vehicle for off-the-road equipment.

The contract has been essentially unchanged over the years except for the compensation schedule. In the spring of 1981, Eastern held discussions with the drivers prior to the change to two-driver teams, in order to meet the strenuous objections raised. Other than that occasion, the contract has been unilaterally drafted by Eastern.

C.

In 1981, eight drivers held contracts with Eastern for the entire year. There is a dispute as to whether one of the drivers is covered by the application. The seven other drivers worked for Eastern an average of 218 days, and earned an average of $35,470, according to the carrier. Three of the drivers worked 237 days or more, and five earned over $36,000. The seven drivers each drove fewer days during the second half of 1981 than the first half, following implementation of the two-driver teams, and only one earned more money.

Four drivers worked for part of the year. Two worked approximately 8 1/2 months, averaging 158 days and $25,800; their rate of driving and earning was comparable to the seven drivers above. One driver worked for four months, and drove 46 days and earned $6700. One driver worked for just over six months, and 114 days and earned $22,400; his rate of driving was comparable to the seven drivers, and his rate of earnings was higher.

The nine drivers still under contract to Eastern at the end of 1981 (not including the driver in dispute) earned no outside income in 1981 while under contract, according to their sworn affidavits.

D.

In 1976, Eastern terminated the contract of one driver. When the driver sought to collect unemployment compensation, it was determined that no income taxes, Social Security taxes, workmen's compensation or unemployment insurance payments were being withheld or made. Both the Internal Revenue Service (IRS) and State of Florida determined that Eastern was the employer of the drivers for tax purposes. The IRS stated:

> As stated in the regulations, generally the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which the result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so.

The IRS concluded that Eastern had the right to control the driver's work, hence he was an "employee" for tax purposes. Eastern advised the IRS and State of Florida that it would pay the taxes under protest solely to avoid the cost of litigation, and that it reserved the right to litigate the issue at a later date. Since January 1, 1977, Eastern has complied with this agreement, but has not sought to relitigate the issue.

However, drivers have been determined not to be employees for purposes of Florida's Workmen's Compensation laws.

E.

The relationship between Eastern and the drivers may be characterized as follows:

Vehicles

The drivers do not own, license, repair, or maintain either the tractors or trailers; nor do they lease them from Eastern or any other lessor. Drivers have no financial stake whatsoever in the truck, and do not supply trucks to Eastern.

Eastern, on the other hand, supplies the vehicles for each trip. Eastern leases the trucks from a lessor who performs all repairs and maintenance and secures necessary licenses. While drivers may have routine maintenance of nominal cost performed on the road, they must contact Eastern or the lessor for authorization to have anything else taken care of.

Drivers must purchase fuel at approved stops, using the lessor's credit card. Eastern reimburses drivers for other approved fuel and toll expenses, as well as repairs.

Under ICC regulations, Eastern's name must appear on the door of the tractor.

Drivers may not carry the property of anyone other than Eastern, either on an outbound trip or on a return trip when the truck might be empty. They may not use the trucks to carry cargo for anyone else when the truck is not in use for Eastern.

Eastern provides $100 petty cash to each driver to pay for tolls and other expenses on the road. Drivers renew this "bank" when they are paid for each trip.

Insurance

Eastern insures itself against damage to the load. Drivers are liable for damage to the truck under some circumstances, but are not required to be bonded or insured.

Loading and Unloading

Drivers must "accept" the trailer from Eastern, and have the authority to have it reloaded to conform to Federal length or height requirements, or to insure proper balancing of the load. Drivers chain the load.

Eastern personnel load and unload the trailers. Loading is usually completed before the driver arrives at the pick-up point, by Eastern stock clerks.

Routes and Scheduling

Drivers do not have any fixed or regular routes. One driver does do only local driving in the Miami area, but other drivers may drive the same route. Drivers who may legally drive are offered runs on a first-in, first-out basis, and are free to reject a run.

Eastern determines when a load will be ready to leave, and when it must be delivered. A driver who accepts a load implicitly agrees to meet Eastern's schedule, although there may be changes en route which delay delivery. A driver who feels he cannot meet the estimated arrival time refuses the offer, and the next driver on the list is contacted. There is no penalty for refusing to take a load.

Drivers as a group refused an offer of a regular Seattle-Miami run to pick up aircraft interiors from Boeing. As a result, Eastern engaged a common carrier to make that run.

In 1981, Eastern demanded that drivers team up, so that two drivers would take a truck, increasing driving time each day and thereby speeding deliveries, as well as increasing truck utilization by an additional 75,000 miles per year per truck.

Drivers have no proprietary interest in any routes, and may drive to any station where Eastern operates or to any vendor that Eastern deals with, anywhere in the United States or Canada.

When on the road, drivers must contact Eastern every eight hours to advise the carrier of their progress en route, as well as to receive new instructions for additional stops or changes in destination. Eastern may add or delete stops while the truck is en route to its destination, and may even change the destination.

Pay

Drivers are paid per mile, plus additional hourly and flat rates for extra services, lay-overs, and flights (See "B", supra). They do not receive any fringe benefits. Eastern makes income tax deductions and treats the drivers as employees for purposes of Social Security taxes (See "C", supra).

Eastern has no control over the number of miles driven to a particular destination, and has no practical way of determining whether a driver has made a detour en route. Drivers are permitted to make personal stops, provided they do not interfere with scheduled delivery of the load.

Eastern would not negotiate higher pay rates with individuals seeking to sign contracts to drive for it. Thus, drivers have no power to negotiate rates, and must either accept Eastern's offer or not drive for Eastern. Eastern did agree to modify some rates when it insisted on having two drivers per truck. Mileage rates are determined by Eastern on the basis of periodic surveys of motor common carrier rates in the Miami area.

Drivers are not guaranteed any minimum number of days, miles, or loads, when they agree to drive for Eastern. A driver maximizes his earnings by accepting offers to drive, if they are made. In spite of the lack of any guarantee, the drivers earned substantial wages in 1981 and engaged in no outside employment. (See "C", supra).

Government Regulation

Drivers are governed by Federal and state laws and regulations which apply to all truck drivers, including physical fitness requirements, driving limits, record-keeping requirements, and speed limits. All fines incurred are the responsibility of the driver. Eastern imposes no additional rules in areas subject to these laws and regulations which give it greater control over drivers.

Subcontracting

Drivers may not subcontract their runs, and may be assisted by qualified drivers subject to Eastern's approval. The driver pays the assistant out of his own earnings. Interstate Commerce Commission regulations effectively prevent owner-operators from contracting to drive their own vehicles for Eastern. The one driver who owns his own tractor therefore cannot drive that tractor for Eastern, and must use the vehicle leased by Eastern.

Hiring

New drivers are "hired" through an informal procedure, by word-of-mouth from the drivers when Eastern advises them of its need for additional drivers.

Drivers sign the standard contract (See "B", supra) upon agreeing to drive for Eastern. They do not complete any of the regular personnel or insurance forms used by employees of Eastern; they do complete the forms for truck drivers required by Federal regulation.

DISCUSSION

I.

The first issue to be resolved is the standard which must be applied to determine whether drivers are employees or independent contractors.

Section 201 of the Act extends all of the provisions of Title I (except Section 3) to common carriers by air and "every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner or rendition of his service."

Both Eastern and IAM urge the Board to apply common law agency principles in making the determination on this issue. Although not binding upon the Board, decisions of the National Labor Relations Board (NLRB) and the courts under the National Labor Relations Act (NLRA) provide useful guidance in a case such as this.

A.

Under the NLRA, independent contractors are specifically excluded from the coverage of that Act. The NLRB, subject to judicial review, determines who are employees and independent contractors. The Supreme Court has held that common law agency principles must be applied to determine whether individuals are employees or independent contractors. NLRB v. United Insurance Co., 390 U.S. 254 (1968). As the Court stated, "What is important is that the total factual context is assessed in light of the pertinent common-law agency principles." Id.

A series of recent decisions by the Courts of Appeals illustrates both the agency test and the factual considerations relevant in review of NLRB decisions.

In Seafarers Local 777 v. NLRB, 603 F.2d 862 (D.C. Cir. 1978), aff'd on reh. 101 LRRM 2628 (D.C. Cir. 1979), ("Yellow Cab"), the Court of Appeals indicated that the "right-of-control" test is used to distinguish independent contractors from employees. Thus, if the person for whom the services are performed retains the right to control the manner and means by which the result is to be accomplished, the relationship is one of employment. However, if control is retained only as to the final result, the relationship is one of an independent contractor. Various factors such as ownership and maintenance of the vehicle, freedom to accept other work, opportunity for entrepreneurial risk-taking and profit, government regulation, pay and fringe benefits, tax status, and supervision are considered. See, also, NLRB v. A. Duie Pyle, 606 F.2d 379 (3rd Cir. 1979); NLRB v. Amber Delivery Service, 107 LRRM 3067 (1st Cir. 1981); NLRB v. Maine Caterers, 107 LRRM 3227 (1st Cir. 1981); and Building Material & Dump Truck Drivers v. NLRB, 108 LRRM 3153 (D.C. Cir. 1981).

B.

The Board finds that the term "subject to its or their continuing authority to supervise and direct the manner of rendition of ... service", as used in Section 201 of the Railway Labor Act, is intended to set forth the common law of agency as the test for employee/independent contractor status. Therefore, if the carrier has a right to control the manner and means by which the result is to be accomplished, the subject personnel will be deemed employees.

II.

Applying the standards set forth by the courts for use of common law agency principles, it is clear that the drivers are employees of Eastern and not independent contractors.

Eastern clearly retains and exercises the right to control the work being performed. It determines when and where shipments will be moved, it supplies the truck to be used and pays all expenses directly or indirectly through the lessor, and the work is a regular and essential part of its business.

Drivers work for Eastern as a full-time occupation. They are not free to use the Eastern-supplied equipment at times when they are not driving for Eastern, and they are not free to haul anyone else's goods along with Eastern property. Drivers have absolutely no financial stake in their trucks, not even the nominal rental fee charged to drivers in Yellow Cab, supra, and are not owner-operators. Any qualified person could drive for Eastern by simply signing the agreement.

Drivers have no special skill which they are required to use, and need only meet the applicable Federal and state standards and pass a Federally mandated road test, written test, and physical examination. Every driver subject to the Federal Motor Carrier Safety Regulations, whether employee or independent contractor, must meet these requirements.

Eastern maintains at least twice daily contact with the drivers, and may change the schedule at any time at its convenience. Drivers have no opportunity to exercise entrepreneurial skills, and face no economic risk of loss.

The role of governmental regulation of over-the-road truck drivers has no decisional significance, and neither enhances nor diminishes Eastern's control. It is an omnipresent, unavoidable fact of life regardless of the drivers' status.

Likewise, the mere recitation in the drivers' agreement that they are not employees of Eastern is a unilateral term imposed by the carrier, and stands in clear contrast to administrative determinations to the contrary by two government agencies.

It is clear from the fact that the drivers had no outside employment income, and from the substantial number of days worked for and dollars earned from Eastern, that the drivers clearly intend to rely upon a long-standing, exclusive employment relationship for their livelihood.

The determinations of the Internal Revenue Service and the State of Florida that drivers are employees, subject to Social Security and income tax withholding, also support the finding of employee status. Eastern acquiesced in those determinations in 1976, and has never sought to contest them.

III

The final issue to be resolved is that of craft or class. Eastern contends that the drivers constitute a separate and distinct craft or class, and have no community of interest with other employees. IAM&AW contends that the drivers belong under its current agreement with Eastern. However, that agreement covers Stock Clerks, Mechanics & Related Employees, and Fleet Service Employees, and the IAM&AW has not indicated which of these three should include the drivers.

The present agreement covering the three crafts or classes defines the work of stock clerks as follows:

> STOCK CLERK: The work of Stock Clerks shall consist of duties primarily in connection with the keeping of stores including but not limited to the identifying, issuing, storing, receiving, shipping, work in connection with taking inventory, inspecting stock and all handling and distribution of plane and engine parts of any other stock or material. Work being performed, on March 15, 1961, in the Supply Department by Stock Clerks who are known as "Stock Chasers" and/or "Expeditors" will in accordance with the needs of the service continue to be assigned to Stock Clerks.

The duties of the drivers includes shipping and distribution of plane and engine parts, and handling of other company material. There is close interaction with stock clerks, lead stock clerks, and their supervisors during load and unloading of trailers. Drivers report to stock clerk supervisors while on the road, over weekends and at night.

However, there is no cross-over from driver to stock clerk, or vice versa. Drivers must meet Federal and state licensing and testing requirements not applicable to stock clerks or other employees. Unlike other ground employees, drivers spend the overwhelming majority of their time away from any Eastern station.

The manner of performance of the drivers' work, coupled with the unique governmental regulations which apply to them and the dissimularities in method of compensation, compel a finding that a separate craft or class of Drivers exists on Eastern.

IV.

A.

During the hearings, a dispute arose as to the eligibility of Stanley Klutch, should the Board find that the drivers are employees under the Act.

Eastern contends that Klutch is no different from other drivers, but merely drives fewer days because he holds a full-time job elsewhere. In 1981, he drove 25 days and earned $4546.

IAM&AW contends that Klutch is not a full-time driver, and should not be covered by the application.

B.

Section 5.301 of the Board's Representation Manual provides:

> Part-Time Employees
>
> When investigating the eligibility of a part-time employee, the Board representative should determine (a) if the employee works an identifiable schedule during a specified time period; (b) whether the employee regularly relieves other employees; (c) what benefits the employee receives; (d) what deductions are taken from the employee's pay; and, (e) any other relevant

> facts which would indicate whether the employee has a regular part-time or a casual part-time employer-employee relationship.
>
> Due to the varied operating practices on different carriers, the Board representative's determination of eligibility regarding part-time employees necessarily must be made in view of these different operations. If the individual's employment is casual, that is where the employee has no regular employee-employer relationship or scheduled work assignment, then the employee should be considered ineligible. [Emphasis supplied].

Under the curcumstances of this case, the Board finds that a driver should be deemed a casual employee where he drives less than 20 days in the 90 days prior to the cut-off (unless newly hired), and should therefore be declared ineligible.

CONCLUSION

The Board concludes that the common law agency principles govern resolution of the question of employee/independent contractor status.

Applying the facts of this case to those principles, the Board finds that drivers are employees within the meaning of Section 201 of the Act who constitute the craft or class of Drivers.

The IAM&AW application is hereby docketed as NMB Case No. R-5297 . On the basis of Board representative Callahan's investigation, the Board finds a dispute to exist in R- 5297 among Drivers of Eastern Airlines. An all-mail ballot election is hereby authorized using a cut-off date of June 30, 1981. Applicant IAM&AW on the ballot, with the count in Miami, Florida.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. W. W. Winpisinger
Mr. William Scheri
George H. Tucker, Esq.
Miriam Hartley, Esq.
Mr. Dwain C. Andrews
William G. Bell, Esq.
Terence G. Connor, Esq.
Richard C. Hotvedt, Esq.
Gregory Lewis, Esq.
Mr. Charles H. Callahan

RKQ/ljb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 81

In the matter of the	CASE NO. R-5288
REPRESENTATION OF EMPLOYEES	DISMISSAL - INSUFFICIENT SHOWING OF INTEREST
of	
METRO AIRLINES .	February 24, 1982
Passenger Service Employees	

The services of the National Mediation Board were invoked by the Transport Workers Union of America, AFL-CIO on December 14, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Passenger Service Employees", employees of Metro Airlines.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Maurice A. Parker to investigate.

FINDINGS

The Investigator's investigation established that the organization had failed to support its application with the required number of authorizations from the employees in the craft or class as set forth in Part 1206.2(b) of the National Mediation Board Rules.

Therefore, the Board finds no basis upon which to proceed in this matter and the application is hereby dismissed subject to Part 1206.4 of the NMB's Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 82

February 24, 1982

Paul A. Dezurick, Esq.
Graham & James
One Maritime Plaza
Suite 300
San Francisco, CA 94111

Re: NMB Case No. R-5294
Singapore Airlines/IBT

Dear Mr. Dezurick:

This will acknowledge receipt of your Request For Dismissal of Application Or For Further Investigation, dated February 16, 1982, in connection with the above-referenced case.

It is Singapore Airlines' position that the application of the International Brotherhood of Teamsters must be dismissed because the authorization cards which constitute its showing of interest under Section 1206.2(b) of the Board's Rules are invalid. In essence, your argument is that the showing of interest is tainted because the carrier's Personnel Director coerced employees into signing Teamster authorization cards by indicating that a union was necessary to protect employees from alleged carrier plans. The Personnel Director subsequently resigned, and has allegedly spoken at union meetings on behalf of the applicant.

The carrier's argument is premised upon a belief that the Personnel Director was a union agent when she spoke to employees prior to her resignation, and provided a name and address list to the union. However, the inescapable fact is that she was a carrier representative and a member of management when she took those actions. The showing of interest is designed to conserve administrative resources by screening out frivolous applications. Employees retain the option of voting in the election should they still desire representation, or refraining from voting should they not wish to be represented. Therefore, the Board finds no basis for dismissing the application.

By direction fo the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. Norman Greene
Mr. Sam Chandiramani
Ms. Laurette Piculin

RKQ/dcb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 83

In the matter of the	:	CASE NO. R-5284
REPRESENTATION OF EMPLOYEES	:	CERTIFICATION
of	:	March 4, 1982
FLYING TIGER LINE, INC.	:	
Flight Attendants	:	

The services of the National Mediation Board were invoked by the Association of Flight Attendants (AFA), on December 8, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Flight Attendants", employees of Flying Tiger Line, Inc.

At the time this application was received, these employees were represented by the International Brotherhood of Teamsters (IBT).

The Board assigned Board Representative Maurice A. Parker to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Flight Attendants, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Roland Watkins, who was assigned to count the ballots in this case.

Number of Employees Voting:

	AFA	IBT	Void Ballots	Number of Employees Eligible
Flight Attendants	156	142	1	365

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Association of Flight Attendants, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Flight Attendants, employees of Flying Tiger Line, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 84

In the Matter of the
Application of the

PROFESSIONAL AIRLINE PILOTS
ASSOCIATION

alleging a representation dispute involving employees of

AIR OREGON AIRLINES, INC.

CASE NO. R-5293

DETERMINATION OF
ELIGIBILITY

March 11, 1982

On January 26, 1982, the Professional Airline Pilots Association (PAPA) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving Pilots, employees of Air Oregon Airlines, Inc. Said application was docketed as NMB Case No. R-5293.

At the time the application was filed, these employees were not represented by any organization or individual.

Board Representative Laurette Piculin was assigned to conduct the investigation. During her investigation, Board Representative Piculin ruled that Captain James B. Davis, an individual presently classified as Assistant Chief Pilot, was ineligible. The Carrier has appealed this determination.

On February 11, 1982, the Board found a dispute to exist and authorized an all mail-ballot election. Davis was sent an impounded ballot. The count has been scheduled for March 12, 1982.

CONTENTION

The Carrier contends that Davis is eligible to participate in this election because he was allowed to vote in a previous representation election. The International Brotherhood of Teamsters was the applicant in the case, NMB Case No. R-5086, which was dismissed. 7 NMB No. 201 (1980). At that time, Davis was classified as a Flight Training Officer. The Carrier asserts that although Davis' job title has been changed from Flight Training Officer to Assistant Chief Pilot, his duties and responsibilities are the same.

FINDINGS OF FACT

The main duties of the Assistant Chief Pilot are to establish and maintain a pilot training program in accordance with the Federal Aviation Regulations (FARS); provide for initial and recurrent pilot testing requirements; assist in the administration and enforcement of an evaluation program for all flight crewmembers; perform as a Carrier Check Pilot; ensure that flight plan data and aircraft charts and publications are current; and maintain records and statistics on aircraft flight performance. The duties and responsibilities of the Assistant Chief Pilot are the same as those of the Flight Training Officer. The title change was made to accommodate a request from the Federal Aviation Administration (FAA) to have the Flight Training Officer assume the title of Assistant Chief Pilot because the Chief Pilot had assumed the added title of Director of Operations.

Davis holds a seniority number with the pilots and retains the right to return to line position at his or the Carrier's request. He does not bid on flying slots and is assigned to fly by the Director of Operations/Chief Pilot only when the latter deems it necessary. On the average, Davis flys the Carrier's aircraft 20 hours a month while the pilots fly about 85 hours a month.

Davis has no authority to hire or fire,, assign or change crew status, add to or reduce the pilot force or make or change any company policy. He has no authority to grant overtime or expend Carrier funds. Davis can issue verbal reprimands but only with the approval of the Director of Operations/Chief Pilot.

DISCUSSION

I.

In the previous case, NMB Case No. R-5086, the Board Representative ruled Davis eligible. Neither the IBT nor the Carrier appealed his determination to the Board. In the present case, the individual has been ruled ineligible. This determination has now been appealed to this Board. Unlike the previous case, the Board has now been asked to rule upon this individual's eligibility. For that reason, the determination in the prior election provides no precedent in the instant case.

II

Several elements and factors were enunciated by the Board in Pan American World Airways, Inc., 5 NMB 112 (1973), which must be considered in determining whether individuals are employees or subordinate officials within the meaning of the Act. Such factors include the authority to hire individuals, discharge, resolve grievances, direct the manner of work done by subordinates, formulate Carrier policy, and expend Carrier funds. These factors were again considered by the Board in numerous cases since that decision. Pan American World Airways, Inc., 7 NMB No. 95 (1980); British Airways, Inc., 7 NMB No. 189 (1980); Frontier Airlines, Inc., 8 NMB No. 99 (1981); and Pan American World Airways, Inc., 9 NMB No. 73 (1982). In the present case, the Assistant Chief Pilot does not meet any of the criteria stated above. Therefore, the Board finds that the Assistant Chief Pilot is an employee or subordinate official within the meaning of the Act.

III

Evidence presented revealed that Davis is presently performing the main function of training pilots. The facts in this case are similar to those in Airborne Express, Inc., 9 NMB No. 17 (1981); In that case, an individual, who was originally hired as a pilot, had assumed the position of an instructor in the Training Department and a line pilot. The Board noted that the individual was presently working as an instructor and in a classification which was not part of the craft or class in that case. In ruling this individual ineligible, the Board noted the policy espoused in Chicago & North Western Railway Company, 4 NMB 240 (1965) that:

> In representation disputes the Act deals with the present status and the present interest of the employees involved and not with potential future status and potential future interests of the employees. The Board has long adhered to the established and recognized practice to vote employees in the one craft in which they are employed at the time of the election.

Applying the above practice, the Board finds that Davis is presently working as Assistant Chief Pilot and in a classification which is not part of the craft or class in this case. This classification shares a community of interest with the craft or class of Flight Instructors. United Airlines, 9 NMB No. 79 (1982). He is, therefore, ineligible to participate in this election.

CONCLUSION

Based on the above facts and pursuant to the Board's responsibilities under Section 2, Ninth, of the Railway Labor Act, as amended, the Board finds that Captain James B. Davis is ineligible.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. Donald W. Streun
Mr. Thomas M. Taylor
Ms. Laurette M. Piculin

RKQ/rwa

RKQ/rwa

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 85

In the Matter of the Application of the	CASE NOS. R-5250 and R-5251
INTERNATIONAL BROTHERHOOD OF TEAMSTERS	FINDINGS UPON INVESTIGATION; ORDER
alleging representation disputes pursuant to Section 2, Ninth, of the Railway Labor Act	March 16, 1982
involving employees of	
MERCURY SERVICES, INC.	

On July 27, 1981, the International Brotherhood of Teamsters (IBT) filed applications pursuant to Section 2, Ninth, of the Railway Labor Act, 45 U.S.C. §152, Ninth, alleging the existence of representation disputes involving employees of Mercury Services, Inc. described as "Fleet Service Employees" and "Mechanics and Related Employees." Said applications were docketed as NMB Case Nos. R-5250 and R-5251, respectively.

At the time the IBT's application was filed, these employees were not represented by any labor organization or individual.

On December 14, 1981, the Board found disputes to exist in both cases and ordered that all-mail ballot elections be conducted. Ballots were mailed on January 22, 1982, and were scheduled to be counted on February 22, 1982.

On February 17, 1982, the IBT filed a protest with the Board alleging that officials of Mercury Services had violated the Railway Labor Act by interfering with the elections. Affidavits in support of the protest were submitted on February 18 and February 23, 1982.

On February 18, 1982, the Board ordered that the ballots be impounded instead of counted, pending resolution of this issue and other issues of eligibility. A copy of the IBT protest was provided to the carrier, and on February 26, 1982, the carrier was provided with copies of the six affidavits submitted by the IBT. The names of the affiants and other employees were deleted to insure confidentiality to the employees.

On March 5, 1982, the Board received the carrier's response to the IBT protest and affidavits.

ISSUE

The issue in these cases is whether Mercury interfered with, influenced, or coerced its employees in their choice of a representative pursuant to Section 2, Ninth, of the Act.

CONTENTIONS

The IBT contends that Mercury has violated the Act by "soliciting employees to turn in their ballots to supervisory officials, unlawfully inducing employees to turn in their ballots by promising them wage increases for doing so, displaying to other employees collected ballots, soliciting lead persons and other employees to collect the ballots of their fellow employees and engaging in individual interrogation of each employee for the purpose of inducing them to turn in their ballots and otherwise unlawfully influencing them to vote against Union representation.

Mercury denies that it engaged in "any conduct which interfered with the employees' rights to vote", and states, in response to the affidavits, that no allegations are made of interference in the craft or class of Mechanics and Related Employees.

FINDINGS OF LAW

Determination of the issue here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 152. Accordingly, the Board finds as follows:

I.

Section 201 of the Act, extends all of the provisions of Title I of the Act, except the provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce...and every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service."

II.

Mercury Services, Inc., is a carrier as defined in Title II, Section 201 of the Act, 45 U.S.C. §181, and Section 1, First, of the Act, 45 U.S.C. §151, First.

III.

Section 2, Fourth, of the Act, U.S.C. §152, Fourth gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." Section 2, Fourth, also allows employees the right to select representatives without carrier influence or interference. That particular subsection reads as follows:

> No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization... (Emphasis supplied).

IV.

Employee-carrier isolation with respect to an employees' choice of a collective bargaining representative is expressed in Section 2, General Purposes Clause. The subsection states that one of the purposes of the Railway Labor Act is "to provide for the complete independence of carriers and of employees in the matter of self organization."

V.

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice ofthe majority of employees under this section, the Board is "authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference,influence, or coercion exercised by the Carrier." (Emphasis supplied).

FINDINGS OF FACT

1.

The six affidavits submitted by IBT may be summarized as follows:

A.

Employee A, a Fleet Service Employee, was called into his supervisor's office and told to vote against representation. The supervisor, George Ametsu, offered a one dollar per hour wage increase if the employee would give his ballot to Ametsu.

Ametsu further indicated that Japan Air Lines would not renew its contract with Mercury for ramp, cabin service, and warehousing if the employees voted to be represented.

Employee A states that 25 fellow employees had similar meetings with Ametsu. He further states that he was told by leadmen that Ametsu called the leads in and urged them to pressure employees to vote against representation.

Finally, Employee A states that the Notice of Election issued by the Board was never posted on the warehouse employee bulletin board.

B.

Employee B, a Fleet Service Employee, states that he was called into Ametsu's office, and that Ametsu asked him for his ballot. Ametsu further told him to tell other employees to turn in their ballots.

Employee B attended a meeting at the Ramada Inn where Kevin Walsh, Mercury's Executive Vice President, told leads to encourage employees to run in their ballots and to disparage the IBT.

Ametsu was later seen by Employee B holding a "handful" of ballots which he said he had collected from other employees.

C.

Employee C, a Fleet Service Employee, states that Phil Subusa, his supervisor's immediate supervisor, stated that the employees' wages would immediately be dropped to the minimum wage if the IBT won. Subusa further stated that employees would be laid off if Mercury lost business if IBT won, but that there would be no lay-offs if IBT lost the elections and Mercury still lost business.

Bob Landry, Employee C's supervisor, called in employees to advise them that the carrier was developing medical benefits and auto insurance, and an optical care insurance program.

Walsh held a meeting with ramp and mechanical employees, at which a retirement package was discussed. He urged employees to tear their ballots in half, and give half to their supervisor or manager, and half to the leadman.

Employee C states that three employees received merit raises when they were not due for them, and that one of these three had been asked for his ballot.

Jim Martin, Department Manager, called Employee C into his office and asked him to tear the ballot in half and turn in one part to Martin.

Employee C did not receive a scheduled merit increase, and Landry stated that no increases would be given during the election.

D.

Employee D is a Fleet Service Employee. Ametsu told him that Japan Air Lines and other customers would not renew their contracts with Mercury if a union was elected.

Employee D saw Ametsu holding six or seven ballots, and states that Ametsu told him that he should also turn in his ballot. Employee D turned in his ballot to Ametsu the next day.

Employee D states that he did not see the Board's Notice of Election on any bulletin board.

E.

Employee E is a Fleet Service Employee. Ametsu told him that he would receive an immediate 50-cent per hour wage increase when he turned in his ballot. Ametsu asked for the ballot several times, and Employee E did finally turn it in. He did not receive any wage increase.

Employee E attended a meeting at which Walsh told employees to give half of their ballot to their supervisors; and that Japan Air Lines would not do business with Mercury if IBT won the elections, and that employees would be out of work.

F.

Employee F is a Fleet Service Employee. Ametsu asked him for half of his ballot. Employee F attended a meeting at which Walsh told employees that Japan Air Lines and other companies would cancel their contracts if IBT won, and told employees to give half of their ballot to their supervisor.

II

Mercury's entire response to the IBT protest and affidavits consists of the following:

> With respect to the question of whether the employer posted Notice and Rules of Election, it is our contention that such Notices were posted sufficiently to advise employees of their coming election, their rights and the procedures involved. This issue had been raised with the Company earlier and our response is consistent with our earlier position.
>
> As to the election concerning various supervisors, the Company has two positions I would like to expound on. First of all, it is the Company's position that it did not engage in any conduct which interfered with the employees' rights to vote in the election. Second, and in specific response to the affidavits supplied by the Union which were sent on to me by letter dated February 26, 1982, I would ask the Board to take note that the affidavits referred only to incidents involving employees in the fleet service unit. Nowhere in the affidavits that I have seen is any allegation made that the Employer engaged in improper conduct with respect to the employees in the mechanics and related employees bargaining unit. In view of the apparent failure of the Union to provide any evidence that the employees in the latter unit were in any way affected by the alleged conduct of the fleet service unit supervisors, it is submitted that the Board should open the ballots for the mechanics and related employees bargaining unit regardless of whatever is decided with respect to the fleet service employees unit.
>
> . . . .
>
> Whatever the Board's determination, be advised that the Employer would be amenable to the conducting of a second mail ballot election under the conditions set forth

> in the initial ballot. This, of course, is not to be deemed as a concession that any misconduct on the part of the Employer occurred nor should it be taken as a withdrawal from our position that the ballots in the mechanics and related employees unit should be counted.

DISCUSSION

I.

The Railway Labor Act gives employees of carriers the right to organize and select a representative without interference, influence, or coercion by the carrier.

The Board has the duty, under Section 2, Ninth, of the Act, when ascertaining who shall represent employees in any craft or class for the purposes of the Act, to "insure" that the method used is such as to guarantee to the employees the opportunity to make such choice free of interference, influence, or coercion by the carrier. Whether the Board uses the device of a secret ballot or any other means to determine the desire of the employees as to who should represent them, the Board must conduct such proceedings in an atmosphere free of any interference or other conduct by the carrier that would tend to interfere with, influence or coerce the employees in their choice.

The terms "interference, influence, and coercion" were defined by the Supreme Court shortly after the Act became law. See, Texas and New Orleans R. Co. v. Bro. of Railway and Steamship Clerks, 281 U.S. 548 (1930); Laker Airways Ltd., 8 NMB No. 79 (1981). The carriers have no constitutional right to interfere with the freedom of employees to select a representative. Id.

The problem before the Board is to determine whether or not there was conduct on the part of the Carrier in this proceeding that prevented the employees from participating in a representation election free from interference, influence, coercion. The test in any case of alleged interference in a Board election is whether the laboratory conditions which the Board seeks to promote have been contaminated. Zantop International Airlines, 6 NMB No.

1247 (1979); Laker Airways, supra; Transkentucky Transportation Railroad, 8 NMB No. 146 (1981).

II.

We turn now to a discussion of the specific allegations against Mercury and its officials.

A.

In spite of the submission of six detailed affidavits by IBT, Mercury has chosen in its response to make a blanket denial of wrongdoing without any effort to contest, excuse, or rebut the IBT allegations. Not a single affidavit denying the allegations was received from the named carrier officials. In effect, Mercury has pleaded "no contest" to the allegations.

Because of this, the Board deems the IBT allegations outlined in the Findings of Fact, Part I, as proven for purposes of this determination.

B.

(1)

In all mail ballot elections conducted by the Board, ballots are sent to the home address of the employees using address labels supplied by the carrier. Employees are free to vote in the privacy of their own homes, without being subject to pressure from carrier or union officials. No one except employees of the National Mediation Board knows who voted in the election. No one, including the Board's employees, knows how the voters who do cast ballots actually marked their ballots. To vote for representation the employee simply marks the ballot and returns the properly-attested envelope with the ballot enclosed to the Board. To vote against representation, the employee need only refrain from voting. It is no business of the carrier or the organization whether or how any employee votes or does not vote.

Employees cannot exercise their right to self-organization in an atmosphere where their employer seeks to control the outcome through the pressure evident in this case. Even employees who would otherwise simply throw their ballots in the trash feel compelled to turn them in as an act of "loyalty." It is for this reason that the Board has held that solicitation of employees to turn their ballots in to carrier officials is a per se violation of the Act. Laker Airways, supra.

(2)

Given the procedure used in Board elections requiring that the majority of eligible employees cast valid ballots for representation in order for there to be a certification, soliciting employees to turn in their ballots to the carrier is analogous to polling employees about their views. The National Labor Relations Board has developed a test for the lawfulness of polling which is helpful in considering Laker's conduct. The NLRB held, in Struksnes Construction Co., 165 NLRB 1062 (1957), that:

> Absent unusual circumstances, the polling of employees by an employer will be violative of Section 8 (a) (1) of the Act unless the following safeguards are observed: (1) the purpose of the poll is to determine the truth of a union's claim of majority, (2) this purpose is communicated to the employees, (3) assurances against reprisal are given, (4) the employees are polled by secret ballot, and (5) the employer has not engaged in unfair labor practices or otherwise created a coercive atmosphere.

The NLRB adopted this test in order to balance employer-employee interests. However, the Board went on to hold that:

> . . . a poll taken while a petition for a Board election is pending does not, in our view, serve any legitimate interest of the employer that would not be better served by the forth-coming Board election. In accordance with long-established Board policy, therefore, such polls will continue to be found violative...of the Act.

The NLRB's reasoning applies with even greater force when an election is actually underway and employees are deciding whether they wish to be represented. In the circumstances of the cases before us, nothing justified any form of polling. See, also, NLRB v. J. M. Machinery Corp., 410 F. 2d 587 (5th Cir. 1969), fn. 3; Laker Airways, supra.

(3)

The promise of pay increases, and new insurance and pension plans, also violates the Act. As the court held in Union of Professional Airmen v. Alaska Aeronautical Industries, 95 LRRM 2868 (D. Ak. 1977):

> The court further finds that the offer to the employees of increased benefits during their organizational process may well interfere with their union efforts. While the benefits were not mandatory it is the mere offer which tends to undermine their activity. Accordingly, these activities on the part of [the carrier] also appear to be in violation of the Railway Labor Act, supra, and must cease. (Emphasis supplied).

C.

In Laker Airways, the Board held:

> The Board holds that it is a per se violation of the Railway Labor Act for any carrier or its officials to solicit employees to turn their ballots in to the carrier. It is, furthermore, a per se violation to provide mailing envelopes for this purpose, and this violation is compounded when such envelopes are distributed with paychecks. It is a violation of the Act, under the circumstances present here, to keep track of which employees do or do not have ballots, and to thereby give the impression of surveillance. It is a per se violation to poll employees during a representation election conducted by this Board. Finally, it is a per se violation for a supervisor to personally receive a ballot from an employee under any circumstances, and without regard to the "voluntariness" with which it is turned over.

Under the circumstances of the present cases, the Board finds that Mercury committed per se violations of the Act by soliciting employees to turn their ballots in to the carrier, by polling employees during a representation election, by receiving ballots from employees, and by offering increased wages and fringe benefits in exchange for ballots.

III.

Because the Board has found that the carrier solicited employees to turn in their ballots to supervisors, and actually collected ballots, the original elections must be set aside. New elections must be conducted in an atmosphere free of unlawful conduct.

In addition, steps must be taken to provide both the employees and the carrier with an incentive to comply with democratic procedures. The new election must therefore encourage maximum employee participation, and provide complete safeguarding of ballots and polling procedures.

The Board has traditionally required that a majority of eligible voters cast valid ballots in order for a representative to be certified. However, it is clear that such a procedure is not required by the Act. For example, in 1935 the Board stated:

> . . .the Board interpreted [Section 2, Fourth of the Act] as requiring a majority of all those eligible rather than a majority of the votes only. The interpretation was made, however, not on the basis of legal opinion and precedents, but on what seemed to the Board best from an administration point of view. Where, however, the parties to a dispute agreed among themselves that they would be bound by a majority of the votes cast, the Board took the position that it would certify on this basis, on the ground that the Board's duties in these cases are to settle disputes among employees, and when an agreement is reached the dispute as to that matter is settled.

First Annual Report of the National Mediation Board (Fiscal Year 1935), at 19.

The Board then noted, id. at 20, that a court challenge had been made to the voting procedure it had adopted. When that challenge reached the Supreme Court, the Court held that a union need not receive the votes of a majority of those eligible in order to be certified. Virginia Ry Co. v. System Federation No. 40, 300 U.S. 515 (1937). The Court reasoned that those who do not participate are presumed to assent to the expressed will of those who do, and that "[t]here is the added danger that the absence of eligible voters may be due less to their indifference than to coercion by their employer." id. Later decisions involving the National Labor Relations Board held that less than a majority of eligibles could elect a representative where the organization certified received a majority of the votes cast. See, NLRB v Standard Lime & Stone Co., 149 F. 2d 435 (4th Cir. 1945); cert. den. 326 U.S. 723 (1945).

In 1947, in response to challenges to the Board's requirement that a majority of those eligible cast valid ballots, the Board sought the opinion of the Attorney General as to whether it had the power to certify a union where less than a majority of eligibles voted. The Attorney General replied:

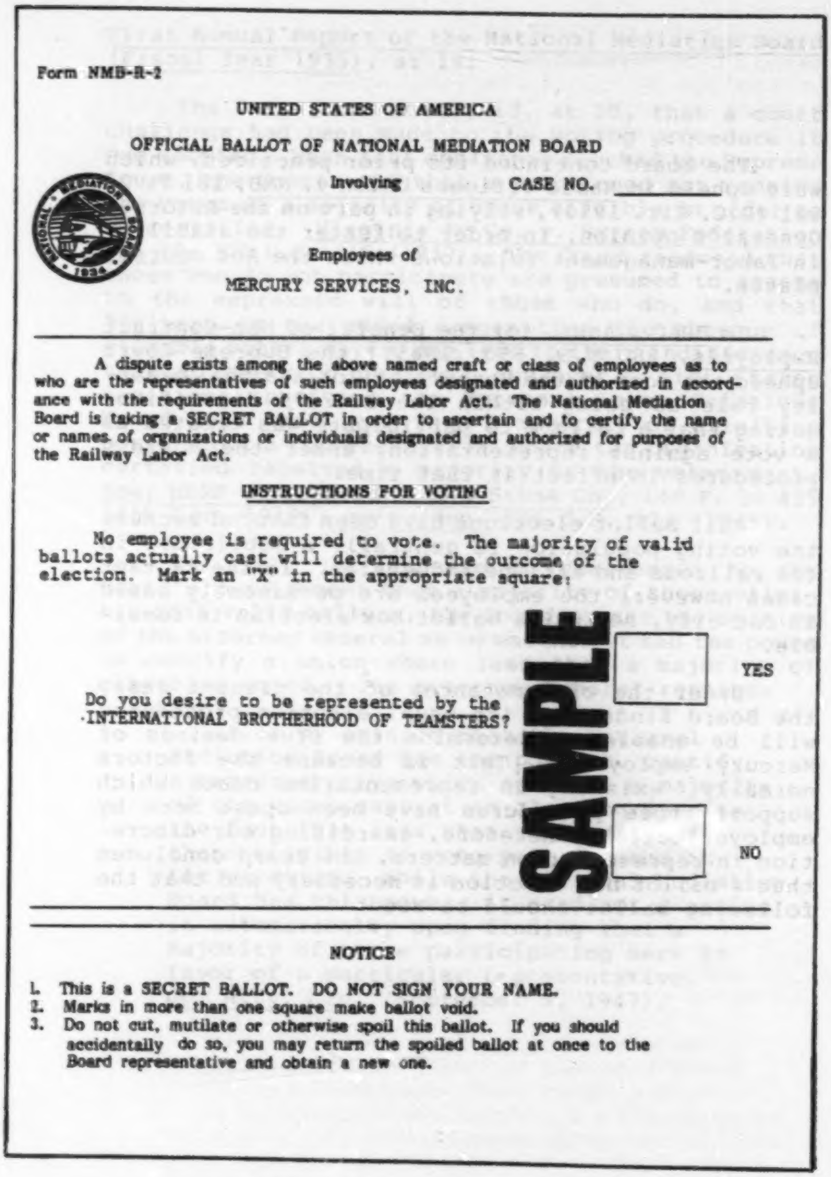
> ...it is my opinion that the National Mediation Board has the power to certify a representative which receives a majority of the votes cast at an election despite the fact that less than a majority of those eligible to vote participated in the election. While the National Mediation Board has this power, it need not exercise it automatically upon finding that a majority of those participating were in favor of a particular representative. Op. Atty. Gen. (September 9, 1947).

The Board continued its prior practices, which were upheld in Radio Officers Union v. NMB, 181 F. 2d 801 (D.C. Cir. 1950), relying in part on the Attorney General's opinion, in order to foster the stability in labor-management relations which the Act contemplates.

In BRAC v Assn. for the Benefit of Non-Contract Employees, 380 U.S. 650 (1965), the Supreme Court upheld the form of the Board's ballot and the majority rule as being within the Board's discretion, noting that a failure to participate was treated as a vote against representation, under the Board's procedures in effect at that time.

Mail ballot elections have been favored because the voting population is generally a mobile one in the railroad and airline industries. In the instant cases however, the employees are permanently based in one city, so that a ballot box election is feasible.

Under the circumstances of the present case, the Board finds that its usual election procedures will be unable to determine the true desires of Mercury employees. This is because the factors normally existing in representation cases which support those procedures have been upset here by employer action. Therefore, exercising our discretion in representation matters, the Board concludes that a ballot box election is necessary and that the following ballot should be used:



Form NMB-R-2

UNITED STATES OF AMERICA

OFFICIAL BALLOT OF NATIONAL MEDIATION BOARD

Involving CASE NO. ______

1934

Employees of

MERCURY SERVICES, INC.

A dispute exists among the above named craft or class of employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of the Railway Labor Act. The National Mediation Board is taking a SECRET BALLOT in order to ascertain and to certify the name or names of organizations or individuals designated and authorized for purposes of the Railway Labor Act.

INSTRUCTIONS FOR VOTING

No employee is required to vote. The majority of valid ballots actually cast will determine the outcome of the election. Mark an "X" in the appropriate square.

SAMPLE

Do you desire to be represented by the INTERNATIONAL BROTHERHOOD OF TEAMSTERS?

☐ YES

☐ NO

NOTICE

1. This is a SECRET BALLOT. DO NOT SIGN YOUR NAME.
2. Marks in more than one square make ballot void.
3. Do not cut, mutilate or otherwise spoil this ballot. If you should accidentally do so, you may return the spoiled ballot at once to the Board representative and obtain a new one.

Finally, to vitiate the violations of the Act by Mercury, and to insure that there will no longer be incentives in cases such as this one for the employer to interfere with the free choice of its employees, the desires of the majority of those actually casting valid ballots will determine the outcome of the elections, whether or not a majority of those eligible participate in the elections. The action we take here should not be considered a precedent for the usual election situation, but is limited to situations where there is interference with a Board conducted election.

IV.

The Board will set aside both elections. Although the IBT affidavits deal primarily with Fleet Service Employees, that craft or class is much larger than the Mechanics and Related Employees. Given the interaction among Mercury's employees at its sole location, the Board believes that the misconduct directed at Fleet Service Employees would be known to the Mechanics and Related Employees, and the taint on one election affects the other election.

CONCLUSION

The Board finds that Mercury has violated the right of its employees to self-organization free of interference, influence, or coercion.

IT IS HEREBY ORDERED THAT:

1. The prior elections in Case Nos. R-5250 and R-5251 are set aside.
2. Ballot Box elections are hereby authorized using a cut-off date of August 9, 1981. No follow-up mail ballot will be used.
3. The form of the ballot will provide "Do you desire to be represented by International Brotherhood of Teamsters?"

with boxes marked "Yes" and "No." No write in space will be provided. The majority of valid ballots actually cast will determine the outcome of the elections.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. Norman Greene
Kenneth P. Young, Esq.
Roland P. Wilder, Jr., Esq.
Mr. John LaFlore
Mr. Kevin Walsh
Clifford P. Chaiet, Esq.

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

	9 NMB No. 86
In the matter of the	CASE NO. R-5287
REPRESENTATION OF EMPLOYEES	DISMISSAL-WITHDRAWN DURING INVESTIGATION
of	
METRO AIRLINES	March 16, 1982
Flight Attendants	

The services of the National Mediation Board were invoked by the Transport Workers Union of America, on December 14, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Flight Attendants", employees of Metro Airlines.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

Subsequently, Mr. Herman Leonard, International Vice President, Transport Workers Union of America, filed a letter with the NMB dated January 25, 1982, withdrawing the application of that organization for the services of the Board in this matter.

On the basis of the letter of withdrawal referred to above, the National Mediation Board hereby dismisses the application and closes its files in Case No. R-5287 subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 87

In the matter of the : CASE NO. R-5293
REPRESENTATION OF EMPLOYEES : CERTIFICATION
of : March 16, 1982
AIR OREGON AIRLINES, INC. :
Pilots :

The services of the National Mediation Board were invoked by the Professional Airline Pilots Association (PAPA) on January 26, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Pilots", employees of Air Oregon Airlines, Inc.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative Laurette Piculin to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Pilots, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Piculin, who was assigned to count the ballots in this case.

Number of Employees Voting:

	PAPA	Number of Employees Eligible
Pilots	33	40

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Professional Airline Pilots Association, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Pilots, employees of Air Oregon Airlines, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 88

In the matter of the	CASE NO. R-5300 (FILE NO. CR-5208)
REPRESENTATION OF EMPLOYEES	
of	DISMISSAL-VOLUNTARY RECOGNITION BY THE CARRIER
DOMINICANA DE AVIACION	
Security Officers	March 16, 1982

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO, on July 8, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Security Officers", employees of Dominicana de Aviacion.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

Subsequently, Mr. Juan W. Mieses, Area Manager, Dominicana de Aviacion, filed a letter with the NMB dated March 8, 1982. In his letter he stated:

> "This will confirm Dominicana de Aviacion's agreement to recognize the International Association of Machinists and Aerospace Workers as the official representative of class and or craft of Security Officers employed by Dominicana de Aviacion, effective this date, March 8, 1982.

On the basis of the letter referred to above, the National Mediation Board hereby dismisses the application and closes its files in Case No. R-5300 subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 89
March 29, 1982

Wyatt Johnson, Esq.
Senior Staff Vice President &
General Counsel
Air Line Employees Association, Int'l.
5600 South Central Avenue
Chicago, IL 60638

Re: NMB Case No. R-5230,
Air Florida and ALEA

Dear Mr. Johnson:

This will acknowledge receipt of your protests concerning alleged carrier interference in the election in NMB Case No. R-5230 among Passenger Service Employees of Air Florida. It is alleged that Air Florida is actively supporting an antiunion campaign being run by the Negotiating Committee for Airport and Ramp Service Agents.

The Board has carefully reviewed the arguments and affidavits supplied by the Air Line Employees Association, International (ALEA), in support of the protests. Although it is contended that the Negotiating Committee is supported by Air Florida, there is no concrete evidence to prove such an allegation, and the ALEA argument is entirely circumstantial. The literature and speeches which purport to show carrier interference do not appear to be anything more than election campaign propaganda, and do not constitute a basis for further investigation. For this reason, the Board finds no basis for setting aside the election or taking other action.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. Victor J. Herbert
Mr. W. W. Winpisinger
George H. Tucker, Esq.
Mr. Don B. Hays
Joseph Z. Fleming, Esq.
John-Edward Alley, Esq.

RKQ/dcb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 90
March 29, 1982

Terence G. Connor, Esq.
Morgan, Lewis & Bockius
2 South Biscayne Boulevard
Miami, FL 33131

Re: NMB Case No. R-5297 (CR-5188) Eastern Air Lines/IAM&AW

Dear Mr. Connor:

This will acknowledge receipt of the Carrier's Motion for Reconsideration, dated March 5, 1982, including a copy of the decision of the Interstate Commerce Commission (ICC) in Ex Parte No. MC-122, dated February 17, 1982. Eastern requests reconsideration of the Board's Findings Upon Investigation, 9 NMB No. 80 (1982), wherein it was determined that contract drivers of Eastern were employees within the meaning of the Railway Labor Act who constitute the craft or class of Drivers.

Ex Parte 122 is an ICC determination which is designed to increase use of owner-operators by shippers, without subjecting them to ICC regulation as motor common carriers. This determination removes past barriers to such relationships which had been erected by the ICC, and will permit shippers to hire owner-operators in the future. However, this Board's Findings Upon Investigation are based upon the relationships actually existing between Eastern and the drivers. Whether Eastern avails itself in the future of the greater flexibility provided by Ex Parte 122 is irrelevant with respect to its status as the employer of drivers as of the date of the Findings Upon Investigation. Furthermore, nothing in Ex Parte 122 precludes a finding that an owner-operator is an employee under the RLA under appropriate circumstances.

Having considered the effect of Ex Parte 122 on its Findings Upon Investigation, the Board concludes that no basis exists for reversing its prior determination. The Board representative will proceed with the election.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. Dwain C. Andrews
Richard C. Hotvedt, Esq.
Gregory Lewis, Esq.
William G. Bell, Esq.
Mr. W. W. Winpisinger
Mr. William Scheri
Miriam Hartley, Esq.
George H. Tucker, Esq.
Mr. Charles H. Callahan

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 91

In the matter of the	CASE NO. R-5225
REPRESENTATION OF EMPLOYEES	DISMISSAL
of	March 29, 1982
AIR FLORIDA, INC.	
Fleet Service Employees	

The services of the National Mediation Board were invoked by the Air Line Employees Association, International (ALEA), on May 19, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Fleet Service Employees", employees of Air Florida, Inc. On June 18, 1981, the International Association of Machinists and Aerospace Workers, AFL-CIO (IAMA&W) intervened in the dispute.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Charles H. Callahan to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Fleet Service Employees, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Callahan, who was assigned to count the ballots in this case.

Number of Employees Voting:

	ALEA	IAM&AW	Number of Employees Eligible
Fleet Service Employees	11	7	75

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 92

In the matter of the : CASE NO. R-5230
REPRESENTATION OF EMPLOYEES : DISMISSAL
of : March 29, 1982
AIR FLORIDA, INC. :
Passenger Service Employees :

The services of the National Mediation Board were invoked by the Air Line Employees Association, International (ALEA), on May 19, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Passenger Service Employees", employees of Air Florida, Inc.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Charles H. Callahan to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Passenger Service Employees, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Callahan, who was assigned to count the ballots in this case.

Number of Employees Voting:

	ALEA	Any Other Org. or Individual	Void Ballots	Number of Employees Eligible
Passenger Service Employees	45	4*	3	536

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

---

* 2 write-in votes for International Brotherhood of Teamsters
1 write-in vote for Brotherhood of Railway, Airline & Steamship Clerks
1 write-in vote for International Association of Machinists & Aerospace Workers, AFL-CIO

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 93
March 29, 1982

Edward A. Brill, Esq.
Counsel for British Airways
Poletti, Freidin, Prashker, Feldman
& Gartner
1185 Avenue of the Americas
New York, NY 10036

Clinton Miller, Esq.
Highsaw, Mahoney & Friedman, P.C.
1050 17th Street, N.W.
Washington, DC 20036

Re: British Airways
NMB File Nos. CR-5107 and CR-5108

Gentlemen:

This will acknowledge Mr. Brill's letter of March 23, 1982, requesting a waiver of Section 1202.15 of the NMB regulations which limits the length of principal briefs in NMB Proceedings to 50 pages. Specifically, Mr. Brill has requested permission to file a principal brief not to exceed 225 pages.

Due to the length of the transcript in this proceeding and the numerous issues raised, the request for a waiver is granted and Mr. Brill and Mr. Miller are hereby authorized to file principal briefs not to exceed 150 pages and reply briefs not to exceed 75 pages.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. W. W. Winpisinger
Mr. William Scheri
Mr. Gordon Drain

RKQ/rwa

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 94

In the matter of	FILE NO. C-5045
LONG ISLAND RAILROAD COMPANY	ORDER
and	April 5, 1982
STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY	

On March 9, 1981, the National Mediation Board issued an Interim Order in the above-captioned matter. 8 NMB No. 89 (1981). The Board held that:

> Unless and until the U.S. Supreme Court modifies or reverses the Court of Appeals*/, this Board is bound by the determination of that Court that the interests of the State of New York [as employer of LIRR and SIRTOA employees] outweigh those of the Federal government, and that the RLA does not pre-empt application of the [New York State] Taylor Law to the carriers and their employees under the Supremacy clause and Commerce clause of the U.S. Constitution.

The Board then held it would withhold its mediatory services.

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*/ United Transportation Union v. Long Island Railroad, 634 F. 2d 19 (2nd Cir. 1980), reversing 509 F. Supp. 1300 (E.D.N.Y. 1980).

On March 24, 1982, the Supreme Court unanimously reversed the decision of the Second Circuit. United Tranpsortation Union v. Long Island Railroad, No. 80-1925, ___U.S.___.

Accordingly, IT IS HEREBY ORDERED THAT the Interim Order, 8 NMB No. 89, is revoked.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Edward D. Friedman, Esq.
Counsel for UTU & IAM&AW

Mr. Richard Ravitch, Chairman
Metropolitan Transportation Authority

Mr. John D. Simpson, Executive Director
Metropolitan Transportation Authority

Mr. Robin H. H. Wilson, President
Long Island Rail Road Company

Anthony R. Mansfield, Esq.
Counsel for MTA, LIRR and SIRTOA

Mr. E. A. Duszak, General Superintendent
Staten Island Rapid Transit Operating Authority

Mr. D. E. Collins, President
American Train Dispatchers Association

Mr. J. F. Systma, President
Brotherhood of Locomotive Engineers

Mr. Richard I. Kilroy, Int'l President
Brotherhood of Railway, Airline and
Steamship Clerks

Mr. Frank Ferlin, President
BRAC-ARSA Division

Mr. R. T. Bates, President
Brotherhood of Railroad Signalmen

Mr. O. W. Jacobson, General President
Brotherhood Railway Carmen of the U.S. & Canada

Mr. W. W. Winpisinger, Int'l President
International Association of Machinists
& Aerospace Workers, AFL-CIO

Mr. A. M. Ripp, Int'l Vice President
International Brotherhood of Electrical Workers

Mr. Harold J. Buoy, President
International Brotherhood of Boilermakers and
Blacksmiths

Mr. George J. Francisco, Int'l President
International Brotherhood of Firemen and Oilers

Mr. Norman Greene, Director
National Airline Division
International Brotherhood of Teamsters

Mr. R. E. Martin, General Vice President
Sheet Metal Workers International Association

Mr. A. T. Otto, Jr., Grand President
Railroad Yardmasters of America

Mr. Fred A. Hardin, President
United Transportation Union

Clinton J. Miller, Esq.
Counsel for BRAC

O'Hagan, Reilly & Gorman
Counsel for BRC

Michael C. Axelrod, Esq.
Counsel for LIRRPBA

Edward J. Hickey, Jr., Esq.
Michael S. Wolly, Esq.
Counsel for ATDA, IBEW, IBFO, BRC, SMWIA and IBBB

Harold Ross, Esq.
Counsel for BLE, BRS and RYA

Honorable Harold Newman, Chairman
Honorable Ida Klaus, Member
Honorable David Randles, Member
New York State Public Employment Relations Board

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 95
April 5, 1982

Mr. William A. Lubbers
General Counsel
National Labor Relations Board
Washington, DC 20570

Re: Imperial Airlines
NMB File No. CJ-5315
(NLRB Case No. 21-CA-20969)

Dear Mr. Lubbers:

This is in response to your request for the opinion of the National Mediation Board regarding whether the above-captioned company is subject to the Railway Labor Act, 45 U.S.C. §151 et seq., pursuant to Title II of the Act.

We understand from the materials provided that Imperial Airlines is a Civil Aeronautics Board-certificated carrier operating scheduled air transportation within the state of California, and charter air transportation in interstate commerce. During its last full fiscal year, Imperial received 65% of its 127,000 passengers from interline ticketing by such common carriers by air as American, Trans World, Pan American, Continental, Western, United, Delta and Republic Airlines. (According to the Official Airline Guide, Imperial has interline agreements with more than eighty common carriers by air). In January 1982, Imperial received over 70% of its passengers from interline fares.

The foregoing establishes that Imperial operates as an integral part of the interstate system of air transportation, and derives a significant portion of its revenue from its interline agreements with other carriers. In addition, Imperial is certificated by the CAB under Section 401 of the Federal Aviation Act of 1958, as amended. It is the opinion of the National Mediation Board that Imperial Airlines is a common carrier by air pursuant to Title II of the Railway Labor Act.

This opinion may be cited as Imperial Airlines, 9 NMB No. 95 (1982).

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 96
April 5, 1982

Clifford P. Chaiet
Portnoy, Messinger, Pearl & Associates, Inc.
350 Jericho Turnpike
Jericho, NY 11753

Re: NMB Case Nos. R-5250 and R-5251

Dear Mr. Chaiet:

This will acknowledge receipt of your letter of March 23, 1982, stating your objection to the Board's Findings Upon Investigation; Order, 9 NMB No. 85 (1982), and requesting that the Board reconsider the eligibility date for the upcoming elections. It is noted that your letter did not present any evidence refuting the allegations made by the International Brotherhood of Teamsters or the Board's findings.

The Carrier has again requested that the Board reconsider the eligibility date. This request was considered by the Board, 9 NMB No. 51 (1982), and for the reasons stated in that letter to the Carrier, the request is denied.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwa
cc: Mr. Norman Greene
Kenneth P. Young, Esq.
Roland P. Wilder, Esq.
Mr. John LaFlore
Mr. Kevin Walsh

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 97

In the matter of the : CASE NO. R-5295
REPRESENTATION OF EMPLOYEES : DISMISSAL
of : April 5, 1982
AIR OREGON, INC. :
Stock Clerks :

The services of the National Mediation Board were invoked by the Transport Workers Union of America (TWU) on February 1, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Stock Clerks", employees of Air Oregon.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Walter L. Phipps to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Stock Clerks, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Laurette Piculin, who was assigned to count the ballots in this case.

Number of Employees Voting:

	TWU	Void Ballots	Number of Employees Eligible
Stock Clerks	0	1	5

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 98

In the matter of the : CASE NO. R-5299

REPRESENTATION OF EMPLOYEES : CERTIFICATION

of : April 5, 1982

GREAT SOUTHWEST RAILROAD, INC. :

Clerical, Office, Station and
Storehouse Employees :

The services of the National Mediation Board were invoked by the United Transportation Union (UTU), on March 1, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Clerical, Office, Station and Storehouse Employees", employees of Great Southwest Railroad, Inc.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Robert B. Martin to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Clerical, Office, Station and Storehouse Employees, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Martin, who was assigned to count the ballots in this case.

Number of Employees Voting:

	UTU	Number of Employees Eligible
Clerical, Office, Station and Storehouse Employees	3	4

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's certification.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the United Transportation Union, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Clerical, Office, Station and Storehouse Employees, employees of the Great Southwest Railroad, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 99

In the Matter of the	CASE NO. R-5294
REPRESENTATION OF EMPLOYEES	DISMISSAL
of	April 21, 1982
SINGAPORE AIRLINES	
Passenger Service Employees	

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters (IBT), on January 21, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Passenger Service Employees", employees of Singapore Airlines.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative Laurette Piculin to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Passenger Service Employees, and by direction of the Board, the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Piculin who was assigned to count the ballots in this case.

Number of Employees Voting:

	IBT	Void Ballots	Any Other Org. or Individual	Number of Employees Eligible
Passenger Service Employees	37	2	1*	99

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr
Executive Secretary

RKQ/dca

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* 1 write-in vote for the International Association of Machinists and Aerospace Workers, AFL-CIO

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 100
April 22, 1982

Mr. Willie L. Clark, Jr.
Solicitor
National Labor Relations Board
Washington, DC 20570

Re: Tri-State Aero, Inc.
NMB File No. CJ-5313
(NLRB Case No. 25-RC-7761)

Dear Mr. Clark:

This is in response to your request for the opinion of the National Mediation Board regarding whether the above-captioned company is subject to the Railway Labor Act, 45 U.S.C. §151 et seq, pursuant to Title II of the Act.

This Board when confronted with this question in 1969, advised the National Labor Relations Board that, "Tri-State Aero, Inc. does not meet the definition of a common carrier by air...; consequently, there is no basis for this Board to exercise jurisdiction over the employer or its employees" 180 NLRB 60(1969).

The employer has alleged that the nature of its operations has altered sufficiently since 1969 to render it a common carrier subject to the provisions of the Railway Labor Act.

Tri-State Aero is an Indiana corporation which engages in air taxi and charter service. It is licensed by both the United States Federal Aviation Administration and the Canadian Department of Transportation to carry passengers and freight in the 50 states and to and from Canada. In addition, Tri-State Aero sells fuel to common carriers such as U.S. Air and Eastern as well as for the United States government. It maintains fuel inventory for Delta Airlines and provides servicing on both a routine and emergency basis for several other airlines.

Tri-State does not carry U.S. Mail nor does it interline with other common carriers by air. It sells aircraft parts and used airplanes in interstate commerce. It also provides pilots for owners of small aircraft on a charter basis. The company owns four aircraft and leases four others which are used exclusively to provide commercial flight services. It also maintains a Flight School which trains pilots.

Ninety percent of Tri-State Aero's charter and freight flights are interstate. Fifty two percent of its gross receipts are generated by its fuel sales.

Based on the documents in this case, the Board is of the opinion that Tri-State Aero is subject to the provisions of the Railway Labor Act.

The documents forwarded by your letter of March 18, 1982, are enclosed. This finding may be cited as Tri-State Aero, Inc., 9 NMB No. 100 (1982).

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/mja

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 101

April 22, 1982

Mr. A. J. Harper, II, Esq.
Attorney for Metro Airlines, Inc.
Fulbright & Jaworski
Bank of the Southwest Building
Houston, TX 77002

Re: NMB Case No. R-5289
Metro Airlines, Inc.

Dear Mr. Harper:

This will acknowledge receipt of the Carrier's Request for Reconsideration dated March 23, 1982. This request was received by the office on March 26, 1982. Specifically, the Carrier requests that the Board reconsider and vacate its direction of an election in the above case, find that the appropriate craft or class for representation purposes is the craft or class of Fleet and Passenger Service Employees, and conduct an investigation in the combined craft or class directing an election if the showing of interest is adequate in such a craft or class.

On December 14, 1981, the Transport Workers Union of America (TWU) filed applications pursuant to Section 2, Ninth, of the Railway Labor Act, 45 U.S.C. §152, Ninth, alleging the existence of representation disputes involving employees of Metro Airlines, Inc. described as Passenger Service Employees and Fleet Service Employees. Said applications were docketed as NMB Case Nos. R-5288 and R-5289 respectively.

On February 24, 1982, the application in R-5288 was dismissed because the investigation established that the organization had failed to support its application with the required number of authorizations from employees in the craft or class. 9 NMB No. 81.

On February 23, 1982, the Board found a dispute to exist in R-5289 and ordered that an all-mail ballot election be conducted. The count was conducted on March 26, 1982.

The Carrier asserts that there is considerable overlap of the functions performed by its fleet service employees and its passenger service employees. Furthermore, the Carrier asserts that these employees share a community of interest.

The Board has considered the Carrier's request and finds that no evidence has been presented to warrant reconsideration of its direction of an election in the above case. The craft or class of Fleet Service Employees is an appropriate one for purposes of representation under the Act. The employees involved perform the duties of fleet service personnel.

For the above reasons, the Carrier's request is hereby denied.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 102

In the matter of the : CASE NO. R-5289
REPRESENTATION OF EMPLOYEES : CERTIFICATION
of : April 22, 1982
METRO AIRLINES :
Fleet Service Employees :

The services of the National Mediation Board were invoked by the Transport Workers Union of America on December 14, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Fleet Service Employees", employees of Metro Airlines.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative Maurice A. Parker to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Fleet Service Employees, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Laurette Piculin, who was assigned to count the ballots in this case.

Number of Employees Voting:

	TWU	Number of Employees Eligible
Fleet Service Employees	23	37

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Transport Workers Union of America, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Fleet Service Employees, employees of Metro Airlines, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No.103
April 28, 1982

Herzl S. Eisenstadt, Esq.
One State Street Plaza
New York, NY 10004

Re: NMB Case No. R-5298, Chesapeake & Ohio Railway (Presque Isle Docks)

Dear Mr. Eisenstadt:

This will acknowledge receipt of the protest of the International Longshoremen's Association, AFL-CIO (ILA), concerning the propriety of an election among the craft or class of Electricians, employees of the Chesapeake & Ohio Railway (Presque Isle Docks), presently represented by ILA. You have requested that the application of the International Brotherhood of Electrical Workers, AFL-CIO (IBEW), be dismissed.

The basis for the ILA protest is its representation, since at least 1953, of various job classifications on the Presque Isle Docks, under a single collective bargaining agreement. This agreement provides for a single seniority roster, uniform benefits and work rules, and transfer of employees from one job classification to another. It is further asserted that electricians are functionally integrated with other employees.

The Board has consistently held that the Railway Labor Act provides for representation of employees on the basis of craft or class, not on an appropriate unit or other basis, and that the historical patterns of representation in the railroad industry provide the basis for craft or class determinations. White City Terminal and Utilities Ry. Co., 9 NMB No. 10 (1981). In particular, the craft or class of Electricians has historically been recognized, and the agreement between the Director General of the United States Railroad Administration and the Railway Employes' Department, AFL, signed during the period of Federal control of the railroads in World War I, recognizes such a craft or class. Early cases of this Board support this conclusion, see, e.g., Southern Pacific Lines, 1 NMB 96 (1938); Pullman Co., 1 NMB 503 (1946), even where some other pattern of representation had existed prior to the invocation of the Board's services pursuant to Section 2, Ninth.

On the basis of the Board's determination that Electricians constitute a generally-recognized craft or class for purposes of representation under the Act, the ILA protest is denied. Ballots previously impounded will be counted at the Board's offices at 10:00 a.m. on April 30, 1982.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. Thomas W. Gleason
Mr. D. S. Garda
Mr. A. M. Ripp
Mr. Joseph E. Anderson

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 104

In the matter of the : CASE NO. R-5175
REPRESENTATION OF EMPLOYEES : CERTIFICATION
of : April 30, 1982
VENEZOLANA INTERNATIONAL AIRWAYS (VIASA) and AEROVIAS VENEZOLANAS, S.A. (AVENSA) Office Clerical Employees :

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW), on December 30, 1980, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as Office Clerical Employees an accretion to the craft or class of Office, Clerical, Fleet and Passenger Service Employees, employees of Venezolana International Airways (VIASA).

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative Charles H. Callahan to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Office Clerical employees, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice. See, Aerovias Venezolanas (AVENSA), 9 NMB No. 78 (1982).

The following is the result of the election as reported by Board Representative David M. Cohen who was assigned to count the ballots in this case.

Number of Employees Voting:

	IAM&AW	Number of Employees Eligible
Office Clerical Employees	3	3

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Association of Machinists and Aerospace Workers, AFL-CIO, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Office Clerical Employees, employees of Venezolana International Airways, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 105

In the matter of the	CASE NO. R-5296
REPRESENTATION OF EMPLOYEES	DISMISSAL
of	April 30, 1982
CARIBBEAN AIR CARGO CO. LTD.	
Fleet Service Employees	

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters (IBT), on January 27, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Fleet Service Employees", employees of Caribbean Air Cargo Co. Ltd.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Charles H. Callahan to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Fleet Service Employees, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Callahan, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IBT	Number of Employees Eligible
Fleet Service Employees	6	24

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 106

In the matter of the : CASE NO. R-5297
REPRESENTATION OF EMPLOYEES : CERTIFICATION
of : April 30, 1982
EASTERN AIR LINES, INC. :
Drivers :

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW), on June 11, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as Drivers, employees of Eastern Air Lines, Inc.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative Charles H. Callahan to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Drivers, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative David M. Cohen who was assigned to count the ballots in this case.

Number of Employees Voting:

	IAM&AW	Number of Employees Eligible
Drivers	9	9

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Association of Machinists and Aerospace Workers, AFL-CIO, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Drivers, employees of Eastern Air Lines, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 107

May 3, 1982

Murray W. Portnoy, Esq.
Portnoy, Messinger, Pearl & Associates, Inc.
350 Jericho Turnpike
Jericho, NY 11753

Re: Mercury Services, Inc.
NMB Case Nos. R-5250 & R-5251

Dear Mr. Portnoy:

This will acknowledge your letter of April 30, 1982, objecting to the elections which were conducted by the Board on April 12, 1982. The Carrier has requested that the Board conduct new elections and change the date of eligibility.

For the reasons stated in previous letters, 9 NMB No. 51 (1982) and 9 NMB No. 96 (1982), the Carrier's request is denied.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwa

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 108

In the matter of the : CASE NO. R-5250
REPRESENTATION OF EMPLOYEES : CERTIFICATION
of : May 3, 1982
MERCURY SERVICES, INC. :
Fleet Service Employees :

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters (IBT), on July 27, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Fleet Service Employees", employees of Mercury Services, Inc.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representatives Walter L. Phipps, Samuel J. Cognata and Roland Watkins to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Fleet Service Employees and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representatives Roland Watkins and John B. Willits who were assigned to count the ballots in this case.

Number of Employees Voting:

	For Representation	Against Representation	Void Ballots	Number of Employees Eligible
Fleet Service Employees	47	25	0	103

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Brotherhood of Teamsters, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Fleet Service Employees, employees of Mercury Services, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwa

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 109

In the matter of the	CASE NO. R-5251
REPRESENTATION OF EMPLOYEES	CERTIFICATION
of	May 3, 1982
MERCURY SERVICES, INC.	
Mechanics & Related Employees	

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters (IBT), on July 27, 1981, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Mechanics & Related Employees", employees of Mercury Services, Inc.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representatives Walter L. Phipps, Samuel J. Cognata and Roland Watkins to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Mechanics and Related Employees and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representatives Roland Watkins and John B. Willits who were assigned to count the ballots in this case.

Number of Employees Voting:

	For Representation	Against Representation	Void Ballots	Number of Employees Eligible
Mechanics & Related Employees	33	23	1	69

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Brotherhood of Teamsters, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Mechanics & Related Employees, employees of Mercury Services, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwa

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 110

In the Matter of the Application of : CASE NO. R-5291

INTERNATIONAL BROTHERHOOD OF TEAMSTERS : NOTICE OF HEARING

alleging a representation dispute pursuant to the Railway Labor Act, as amended, involving personnel of : May 6, 1982

ALIA ROYAL JORDANIAN AIRLINES :

On December 2, 1981, the International Brotherhood of Teamsters (IBT) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving Fleet Service Employees of Alia Royal Jordanian Airlines. Said application has been docketed as NMB Case No. R-5291.

The Board assigned Board Representative Thomas C. Kinsella to investigate. During the course of the investigation, issues arose concerning whether the craft or class of Fleet Service Employees exists on Alia, and if so, what classifications are part of the craft or class.

NOTICE is hereby given that a hearing will be held before Hearing Officer Roland Watkins in New York, New York, commencing on June 2, 1982, on the issues stated above.

The Carrier will arrange to have each of the subject personnel available to testify with respect to their actual duties and responsibilities.

The Board's Executive Secretary and the Hearing Officer are delegated authority to provide for the proper and expeditious conduct of this investigation.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr
Executive Secretary

cc: Mr. Norman Greene
Mr. Mark Davidoff
Myles C. Cunningham, Esq.
Mr. Ahmad Sabbagh
Mr. Neal Gross

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 111
May 6, 1982

James M. Walters, Esq.
Fisher & Phillips
First National Bank Tower
Suite 3500
Atlanta, GA 30303

Re: NMB Case Nos. R-5301 & R-5302
Southwest Airlines/IBT v. IAM

Dear Mr. Walters:

This will acknowledge receipt of your telex of May 4, 1982, on behalf of Southwest Airlines, protesting the docketing of the application of the International Brotherhood of Teamsters in the above-referenced cases as two cases instead of one. Specifically, Southwest contends that "Fleet and Passenger Service Employees" is the appropriate craft or class, rather than the crafts or classes of "Fleet Service Employees" and "Passenger Service Employees" as docketed by the Board.

Southwest asserts that the employees in these cases share a single community of interest by virtue of the collective bargaining agreement between the carrier and the International Association of Machinists and Aerospace Workers. The Board's investigation in this case, and review of the job description included in the agreement, disclose that two identifiable crafts or classes exist on Southwest. With particular reference to Operations Agents, the job description for this position is almost entirely fleet service related, with only incidental and minimal passenger contact.

In light of the Board's well-established determination that Fleet Service Employees and Passenger Service Employees constitute separate and distinct crafts or classes in the airline industry under current industry practice, no basis is presented for consolidating the two cases. The carrier's protest is therefore denied.

By direction of the NATIONAL MEDIATION BOARD

Rowland K. Quinn

Rowland K. Quinn, Jr
Executive Secretary

cc: Mr. W. W. Winpisinger
Mr. William Scheri
Mr. Norman Greene
Wilma Liebman, Esq.
Mr. Robert B. Martin

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 112

In the matter of the
REPRESENTATION OF EMPLOYEES
of
THE CHESAPEAKE & OHIO RAILWAY COMPANY (PRESQUE ISLE DOCKS)

Electricians

CASE NO. R-5298
CERTIFICATION
May 6, 1982

The services of the National Mediation Board were invoked by the International Brotherhood of Electrical Workers (IBEW) on February 19, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Electricians", employees of The Chesapeake & Ohio Railway Company (Presque Isle Docks).

At the time this application was received, these employees were represented by the International Longshoremen's Association (ILA).

The Board assigned Board Representative Joseph E. Anderson to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Electricians, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Roland Watkins, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IBEW	ILA	Number of Employees Eligible
Electricians	15	1	17

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Brotherhood of Electrical Workers, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Electricians, employees of The Chesapeake & Ohio Railway Company (Presque Isle Docks), its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K Quinn

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 113

May 7, 1982

Mr. Willie L. Clark, Jr.
Solicitor
National Labor Relations Board
Washington, DC 20570

Re: TLI, Inc.
NMB File No. CJ-5271
(NLRB Case No. 14-CA-15111 et al.)

Dear Mr. Clark:

This is in response to your request for the opinion of the National Mediation Board regarding whether the above-captioned company is subject to the Railway Labor Act, 45 U.S.C. §151 et seq.

We understand from your records that TLI, Inc. (TLI) is engaged in the operation of a nationwide employee-leasing service. The Illinois Central Gulf Railroad (ICG) is TLI's second largest customer nationwide, with TLI supplying employees to ICG's operations in roughly 20 states. At its facility in Venice, Illinois, TLI supplies ICG with employees for operations at ICG's railroad terminal. These employees load and secure piggy-back trailers on trains, unload cars by crane, "spot" trailers in yards and deliver trailers to customers within a 30 mile radius. ICG supplies trucks and other equipment to TLI; this equipment is leased by ICG from Gulf Transport, a bus company owned by ICG.

The ICG Dispatcher directs the TLI employees work. There is no TLI supervisor present at the Venice facility. TLI employees report sickness and absences to the ICG Dispatchers.

Under the terms of its agreement with ICG, TLI provides the manpower and is solely responsible for such things as negotiations and signing of collective-bargaining agreements and adjustment of grievances. For services rendered, ICG pays TLI a sum representing wages earned by TLI employees, payroll costs, vacation, health and pension benefits, plus a weekly per-employee fee. ICG reserves the right to request removal of any TLI employee from its premises during the individual's first 30 days of employment; thereafter employees may be discharged for cause. TLI is responsible for training and qualifying employees, disciplining employees, conducting safety meetings and "spot checking" drivers for compliance with ICG rules and applicable regulations.

Investigation revealed that TLI holds a contract with a Carrier subject to the Railway Labor Act for the performance of services in connection with the transportation of freight by railroad, subject to the direct and on-going control of individuals employed by ICG. Such activities are of a nature that are traditionally performed by employees of carriers in the railroad industry and would be subject to the RLA were they performed by employees of the ICG. Missouri-Illinois Central Industries, Limited, 7 NMB No. 256 (1980).

Based upon the nature of the activities performed by TLI, the relationship between TLI and ICG, and the degree of control exercised by ICG, the Board is of the opinion that the activities and employees performing such activities are subject to the Railway Labor Act. Because the record provided did not discuss the scope of TLI's other operations outside of Venice, this opinion is necessarily limited to the facts and circumstances presented.

The documents forwarded by your letters of inquiry are enclosed. This finding may be cited as TLI, Inc., 9 NMB No. 113 (1982).

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

-Enclosures-
RKQ/rwb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 114

In the matter of the	CASE NO. R-5134
REPRESENTATION OF EMPLOYEES	DISMISSAL
of	May 13, 1982
ALITALIA AIRLINES	
Office Clerical Employees	

The services of the National Mediation Board were invoked by the Office & Professional Employees International Union (OPEIU), on June 5, 1980, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Office Clerical Employees", employees of Alitalia Airlines.

At the time this application was received by the Board, these employees were represented by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW).

The Board assigned Board Representative Thomas C. Kinsella to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Office Clerical Employees, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Roland Watkins, who was assigned to count the ballots in this case.

Number of Employees Voting:

	OPEIU	IAM&AW	Void Ballots	Number of Employees Eligible
Office Clerical Employees	1	40	2	92

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 115
May 20, 1982

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Re: NMB File No. CR-5177

Gentlemen:

On December 12, 1981, ALPA/AFA filed a request that the Board obtain certain information for use in its rebuttal case. The IBT filed a similar request on December 31, 1981.

On January 29, 1982, Hearing Officer Mary L. Johnson ruled that in order for the Board to properly evaluate the information requests, it would be necessary for the hearing officer to inspect the various documents.

In February 1982, the Hearing Officer visited the premises of TAC, TXI, and NYA. Based on her review of the documents which the unions had requested the Hearing Officer issued a ruling on March 4, 1982, that there was no need for the Board to order TAC, TXI and NYA to turn over these documents to the Board.

ALPA/AFA and the IBT have appealed as erroneous the hearing officer's determination that the documents were not necessary to the development of a complete record in this case.

Both ALPA/AFA and the IBT rely on the Board's letter of November 5, 1981, 9 NMB No. 18. That letter stated *inter alia*, that upon completion of the companies' direct cases, the Hearing Officer would review the record and "will order the production of such documents *as may be necessary for development of a complete record* and for an adequate rebuttal presentation" (Emphasis added).

The National Mediation Board did not direct the Hearing Officer to *order* the production of documents. Instead, the Board relied upon the Hearing Officer to review the record for completeness and determine the necessity of receiving several additional documents into the record. The Hearing Officer found the state of the record to be adequate for the Board's purposes, and that the requested documents would not add new evidence to the record. As the hearing officer was under no affirmative obligation to order the production of unnecessary documents and turn them over to the unions, she did not err in her ruling. For this reason, the unions' appeals are denied.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/mja

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 116

In the Matter of the Application of	CASE NO. R-5302
INTERNATIONAL BROTHERHOOD OF TEAMSTERS	DETERMINATION OF ELIGIBILITY
alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act, involving employees of	May 24, 1982
SOUTHWEST AIRLINES	

On March 17, 1982, the International Brotherhood Teamsters (IBT) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving Passenger Service Employees of Southwest Airlines. Said application has been docketed as NMB Case No. R-5302.

At the time the application was received, the employees were represented by the International Association of Machinists & Aerospace Workers, AFL-CIO (IAM&AW) pursuant to a voluntary recognition agreement.

The Board assigned Board representative Robert B. Martin to investigate. During the course of the investigation, issues arose concerning the eligibility of 27 newly-hired employees to vote.

ISSUES

The issue is whether 27 Reservations Agents who began work on April 14 and 15, 1982, are eligible to vote in this case.*/

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*/ Although the IBT refers to 27 employees in its appeal, one of the 27 employees actually reported for duty on April 16, 1982.

CONTENTIONS

IBT contends that none of the 27 employees is eligible because they were hired solely for the purpose of expanding the list of eligible voters, rather than for bona fide business reasons, and that only carrier delay permitted Southwest to hire them prior to the cut-off date.

Southwest contends that the employees were properly hired in accordance with its normal procedures, and under circumstances which show that there was no improper motivation on its part.

IAM&AW supports the Board representative's ruling that the employees are eligible to vote.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 152. In this connection, the Board finds as follows:

I.

Section 201 of the Act, extends all of the provisions of Title I of the Act, except to provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce...and every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service."

II.

Southwest Airlines is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181.

III.

Section 2, Fourth, of the Act, U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representatives of the craft or class for the purposes of this Act."

IV.

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V.

IAM&AW and IBT are labor organizations and representatives as defined in Section 1, Sixth, 45 U.S.C. §152, Sixth, and Section 2, Ninth, of the Act.

FINDINGS OF FACT

I.

The IBT application was docketed on March 17, 1982, and the parties and the carrier were so advised by letter on that date. On March 18, 1982, the Board advised the parties and the carrier that the investigation would commence in Dallas on March 30.

On March 19, 1982, the carrier advised the Board that it would be unable to meet on the original date, and suggested that the meeting be rescheduled for April 20. On March 22, the Board rescheduled the investigation for April 20, 1982.

The investigation began on April 20, 1982. The cut-off date for voter eligibility was set as April 15, 1982, the last day of the last payroll period prior to the Board representative's initial meeting on the property, in accordance with Sec. 3.503-5 of the Representation Manual.

II.

In early February 1982, carrier officials determined that additional Reservations Agents would be needed for the San Antonio Reservation Center. Applications on file were screened during February 12-15, 1982, and 97 applicants were selected for initial interviews. Forty-five of the applicants then were selected for additional interviews.

On February 25, 1982, W. W. Franklin, Vice President Ground Operations, advised carrier President H.D. Kelleher of the need for 25 additional Reservations Agents in March. At some point during the following week, Kelleher approved this request for a new training class.

Applicants from the pool of 45 were interviewed and hired between March 16 and March 19, and the class began on March 22, 1982. Training ended on April 2, and 14 employees reported for work on April 14, 12 reported on April 15, and one reported on April 16, 1982. Trainees are not paid by Southwest until they officially report for duty following completion of the training course.

III.

The carrier's payroll periods are from the first day of the month to the fifteenth, with pay day on the twentieth; and from the sixteenth to the end of the month, with pay day on the fifth day of the following month.

Although IBT asserts that the employees who reported for work on April 14 and 15, were not paid until May 5, 1982, the carrier indicates that they were paid on April 20, 1982, along with all other employees.

IV.

Reservations Agents who completed training on December 13, 1981, reported for duty on January 2, 3, or 4, 1982.

DISCUSSION

The evidence adduced in this investigation indicates that Southwest had a need for additional Reservations Agents, and that a new class of agents was authorized prior to the docketing of the IBT application. Interviewing of applicants and commencement of the training class occurred simultaneously with the docketing, scheduling, and rescheduling of the case.

It is true that only the delay caused by rescheduling of the investigation allowed the 26 employees who reported on April 14 and 15 to be potentially eligible to vote. However, the record of this case does not provide sufficient grounds for support of the IBT contention, that these employees were hired solely to "pad" the list, to warrant excluding them from the election.

CONCLUSION

The 26 employees who reported on April 14 and 15, 1982, are eligible to vote in this case. The employee who reported on April 16, 1982, is ineligible.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. Norman Greene
Mr. Marvin Schlinke
Wilma Liebman, Esq.
Mr. W. W. Winpisinger
Mr. William Scheri
Mr. Herbert D. Kelleher
James M. Walters, Esq.
Mr. John B. Willits

RKQ/dca

1934

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 117
May 24, 1982

Mr. William A. Lubbers
General Counsel
National Labor Relations Board
Washington, DC 20570

Re: International Total Services/Services & Systems, Ltd.
NMB File No. CJ-5327
(NLRB Case Nos. 16-CA-10070,-10069, and -10150)

Dear Mr. Lubbers:

This is in response to your request for the opinion of the National Mediation Board regarding whether the above-captioned company is subject to the Railway Labor Act, 45 U.S.C. §151 et seq., pursuant to Title II of the Act.

We understand from the materials provided, that International Total Services (ITS) purchased Security 76 from American Airlines in January 1980. Security 76 provided maintenance, janitorial, and security personnel to American Airlines, and was determined to be a "carrier" subject to the Railway Labor Act in 1974, based upon its ownership by American Airlines and the nature of the services performed. See, Security 76, Inc., NMB File No. C-4295 (Sept. 9, 1974); Security 76, Inc., 214 NLRB No. 56 (1974).

Following the purchase of Security 76, ITS operated it as part of ITS, providing janitorial service to American. Security 76 continued to provide the same services to American as it had prior to the sale to ITS. Service & Systems, Ltd. (S&S), is part of ITS, and apparently all three are operated as a single, integrated business. When American decided not to award the janitorial contract to ITS (Security 76), S&S bid on and was awarded the contract. American, to save money, awarded the contract to S&S at a rate which required termination of several employees and a general wage reduction for the rest. The work performed is identical to that performed by ITS (Security 76), but at a reduced cost to American.

The foregoing facts establish that ITS/S&S hold contracts with a common carrier by air subject to the Railway Labor Act for the performance of services in connection with transportation by air, subject to the continued control of American Airlines and identical to the work performed when American owned Security 76. The only contract ITS/S&S holds in Texas is the American contract, and the contract provides for maintenance/janitorial work at American's Reservations Center, Leaving Center, and Flight Academy.

Based upon the nature of the activities performed by ITS/S&S and the degree of control exercised by American Airlines, the Board is of the opinion that the activities and employees performimg them are subject to the Railway Labor Act.

This finding may be cited as International Total Services/Services & Systems Ltd., 9 NMB No. 117 (1982).

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

1934

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 118

In the matter of the
REPRESENTATION OF EMPLOYEES
of
T. G. RAILWAY ENTERPRISE COMPANY, INC.
Carmen

CASE NO. R-5305
DISMISSAL-WITHDRAWN DURING INVESTIGATION
June 1, 1982

The services of the National Mediation Board were invoked by the Brotherhood Railway Carmen of the United States & Canada, on April 14, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Carmen", employees of T. G. Railway Enterprise Company, Inc.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

Subsequently, Mr. Newell G. Robison, General Vice President, Brotherhood Railway Carmen of the United States & Canada, filed a letter with the National Mediation Board dated May 25, 1982, withdrawing the application of that organization for the services of the Board in this matter.

On the basis of the letter of withdrawal referred to above, the National Mediation Board hereby dismisses the application and closes its files in Case No. R-5305 subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 119

June 4, 1982

DETERMINATION

Re: Factfinding Panels Established Pursuant to Section 509 of the Rail Passenger Service Act, as Amended

The National Mediation Board has received numerous inquiries, suggestions and requests from Amtrak Commuter or a commuter authority on the one hand and representatives of various classes and crafts of employees on the other, hereinafter referred to as parties, associated with the factfinding panels to be established under Section 509 of the Rail Passenger Service Act, as amended. Although the Board had not anticipated that the parties would look to it for clarification of the numerous issues associated with the factfinding panels, the Board has issued this determination to fully inform the parties of the Agency's limited role in connection with this matter.

In the first instance, the Agency's statutory mandate with respect to the factfinding panels is quite narrow. Section 509(b) states: "The National Mediation Board shall appoint public members to the panel established under subsection (a) of this section." Upon appointment of a public member or members to a factfinding panel pursuant to Section 509(b) of the Act, the Board's responsibility and authority under the statute is exhausted with respect to that panel. The Agency is not empowered to adjudicate or otherwise resolve controversies between the parties with regard to any other aspects of the panels' establishment, operation or effect.

Furthermore, the statute authorizes Board action only where a panel has been established jointly by representatives of labor and management. It is the view of the Board that its obligation under Section 509(b) does not begin because unilateral action has been taken by either management or labor. In addition, the NMB is neither explicitly nor implicitly granted any responsibility or authority with regard to the panels' establishment under Section 509.

Unless the parties act to establish the factfinding panels pursuant to Section 509(a), there is no identifiable entity, so the NMB cannot appoint a public member or members to serve pursuant to Section 509(b). Further, it is clear from the statutory language, format and context that the reference to May 1, 1982 in subsection 509(a) solely pertains to the parties' establishment of the factfinding panels, not to any action by the NMB.

The question of whether or not parties other than those who joined in establishing the panel are bound by or subject to the jurisdiction of the panel is not within the authority or responsibility of the NMB. This issue, like all other issues other than the actual appointment of a public member, must be resolved by a forum other than this Agency.

Where the parties, who have established a factfinding panel, have agreed in writing to the tentative selection of a particular public member, the Board will give the parties' suggestion consideration. However, the NMB is not bound by that suggestion or any other procedures which may be developed by the parties with respect to the selection of the public member. Rather, subsection 509(b) of the Act empowers the Board to appoint the public member of the panels without qualifying or limiting the Board's exercise of its statutory discretion. The Board will not consider individuals for subsequent appointment who previously have been designated to serve on another panel.

The question of compensation of the public members is not addressed by the Act and the Board has been advised by the Office of Management and Budget that it is not authorized to compensate the public members. Accordingly, arrangements for compensation will have to be made directly by the parties.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rec

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 120

In the matter of : CASE NO. A-10691

NORTH CAROLINA STATE PORTS AUTHORITY : FINDINGS UPON INVESTIGATION

and : June 8, 1982

NORTH CAROLINA PORTS RAILWAY COMMISSION :

On August 29, 1980, the International Longshoremen's Association, AFL-CIO (ILA) invoked the services of the National Mediation Board pursuant to Section 5, First, of the Railway Labor Act, as amended, 45 U.S.C. §155, First, alleging a dispute concerning rates of pay rules and working conditions of employees represented by it on the North Carolina State Ports Authority (Ports Authority). The case has been docketed as Case No. A-10691.

On January 21, 1981, the North Carolina State Ports Authority filed a motion to dismiss this case due to lack of jurisdiction.

On January 22, 1981, the Board issued an Order to Show Cause to the North Carolina State Ports Authority, the North Carolina Ports Railway Commission, (Railway Commission) and the ILA. The basis for this order was the allegation by the Ports Authority that it had transferred all railroad rolling stock and equipment to the Railway Commission, a separate agency of the State of North Carolina. Therefore, the Ports Authority argued, it was no longer a "carrier" within the meaning of Section 1, First, of the Railway Labor Act.

The Board ordered that the parties show cause as to why the Railway Commission should not be deemed a successor employer for all purposes under the Railway Labor Act. 8 NMB No. 66 (1981).

On April 6, 1981, the Board ordered that a hearing be held in the this case. 8 NMB No. 103. The hearing commenced on June 2, 1981, in Washington, D.C., before Hearing Officer Roland Watkins. Additional hearings were held on June 3-4, June 16-18, and July 13-14, 1981. Representatives of the ILA, Ports Authority, and Railway Commission appeared, participated and were afforded full opportunity to present their respective positions and evidence, and to examine and cross-examine witnesses. The ILA, Ports Authority, and Railway Commission submitted post-hearing briefs and reply briefs.

ISSUES

On the basis of the Board's investigation and hearing in this case, the issues are:

1. Whether the Ports Authority is a carrier within the meaning of §151, First of the Railway Labor Act?

2. Whether the Railway Commission is a carrier within the meaning of §151, First of the Railway Labor Act?

3. Should the Railway Commission be deemed the successor to the Ports Authority for purposes of the Railway Labor Act, and thereby substitute the Railway Commission for the Ports Authority for all purposes under the Act?

CONTENTIONS

ILA argues that the creation of the Railway Commission is an attempt by the state of North Carolina to divest the National Mediation Board of jurisdiction over employees whose functions are integrally involved with the operation of a terminal railway. In addition, ILA argues that the Ports Authority and the Railway Commission are a single, interdependent entity and hold themselves out to the public as such; and that the activities of the Ports Authority in connection with the operations of the terminal railway and the mission of the Port facilities persist following the changeover from the Ports Authority to the Railway Commission in January 1981.

The Ports Authority contends that it is not a Carrier within the meaning of the Act because of the transfer of the trackage and equipment to the Railway Commission. Furthermore, the Ports Authority denies that it is owned or controlled by the Railway Commission or that the Ports Authority or Railway Commission are under common control.

The Railway Commission asserts that it is not a proper party to this action because 1) the ILA has not alleged a representation dispute within the meaning of Section 2, Ninth, of the Railway Labor Act 2) there exists no dispute between the ILA and the Railway Commission for jurisdictional purposes under Section 5, First, of the Railway Labor Act and 3) the National Mediation Board has not obtained jurisdiction over the Railway Commission as a result of any violation of the Act. The Railway Commission argues that it is not the successor to the Ports Authority. Although the Railway Commission acknowledges that it has acquired some but not all of the trackage owned by the Authority, it contends that it is not a successor because it has performed the same start-up functions required of any new carrier, including acquiring rights of way, negotiating contracts and hiring personnel.

Furthermore, the Railway Commission asserts that certification of the ILA as the representative of the Railway Commissions' employees would be in violation of the spirit and intent of the Railway Labor Act. Finally, the Railway Commission requests that the NMB issue a determination that the Railway Commission is not a proper party to this action and that the NMB has no jurisdiction over the Railway Commission at the present time.

In their reply briefs, the Ports Authority and the Railway Commission have requested that the Board grant their separate motions to strike ILA's brief from the record on the basis that the brief exceeded the page limitation stated in Section 1202.15 of the NMB's Rules and Regulations (29 C.F.R. §1202.15). This section limits the length of principal briefs to 50 pages unless a waiver has been requested and granted. In this instance, the ILA attached to its brief, which was 38 pages in length, a summary of the transcript portion of the record. This attachment numbered 144 pages. The Ports Authority argues that the summary is "argumentative, misleading, and calculated to present to the Board, in the most favorable light possible, the position of the ILA." The Railway Commission contends that the attachment "is nothing more then a shallow attempt by the ILA to subvert the rules of the NMB (and explicit orders of the hearing officer) by labelling what is actually a substantive portion of the ILA's brief as an appendix." The ILA's response is that the appendix is not incorporated in the brief and exists independent of the brief. For this reason, the ILA states that the appendix "can be read - or not be read - by itself or in conjunction with the brief, as the reader may prefer." Should the Board deny the motion to strike the Ports Authority and the Railway Commission request additional time to reply to the appendix.

FINDINGS OF LAW

Section 1, First, of the Act defines the term carrier to include "any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such carrier..."

ILA is a labor organization and representative as defined in Section 1, Sixth, 45 U.S.C. §152, Sixth, and Section 2, Ninth, of the Act.

FINDINGS OF FACT

BACKGROUND

In North Carolina Port Authority, 5 NMB 267 (1969), the Board considered the issue of whether the Ports Authority is subject to the jurisdiction of the Railway Labor Act pursuant to Section 1, First, of the Act. Investigation revealed that the Ports

Authority operated a terminal railroad at each of its port facilities in Wilmington and Morehead City, North Carolina. At that time, the Ports Authority operated six miles of track at Wilmington and three miles at Morehead City. The operations included the movement of freight to and from freight cars owned by interstate rail carriers, the switching of railroad cars, and the storage of freight moved in interstate and foreign commerce. Jurisdiction was asserted pursuant to Section 1, First, of the Act.

Further investigation disclosed that a dispute existed among the crafts or classes of 1) Dock and Warehousemen and 2) Security Guards (Police), employees of the Ports Authority. Following an election in the above crafts or classes, the ILA was certified as the representative for those crafts or classes of the Ports Authority, its successors and assigns. 5 NMB 288 (1970).

Thereafter, the ILA requested that the United States District Court, Eastern District of North Carolina, order the Ports Authority to commence immediately good faith negotiations with the ILA. The District Court concluded that the Ports Authority was not a carrier and dismissed the case. ILA v. N.C. State Ports Authority, 332 F. Supp. 95 (E.D. N.C. 1971). This decision, however, was vacated and remanded by the United States Court of Appeals for the Fourth Circuit. ILA v. North Carolina Ports Authority, 463 F. 2d 1 (4th Cir. 1972). The Circuit Court reasoned that the Board was correct in its finding, concluding that:

> Whether the statutory meaning of 'carrier' is a point of law or a question of fact is presently immaterial. If the former, then we think the term includes such facilities as the Authority provided. Nevertheless, if the resolution of the matter be one of fact for the Board, the finding cannot be appraised as without substantial support in the evidence when the agreed modus operandi of the Authority is recalled. Moreover, it is such a finding as is well within the province of the Board.

Upon remand, the District Court held that the Ports Authority is not immune under the Eleventh Amendment from the union's action to compel it to negotiate. ILA v North Carolina State Ports Authority, 370 F. Supp. 33 (E.D. 1974). North Carolina law prohibited the Ports Authority from entering into a collective bargaining agreement with the ILA. This statute was found to have been preempted by the Railway Labor Act. The Ports Authority was ordered to bargain with the ILA.

This decision was appealed by the Ports Authority to the Circuit Court. In its opinion, North Carolina Ports Authority v. ILA, 511 F. 2d 1007 (4th Cir. 1975), the Court of Appeals affirmed the District Court's decision and noted that:

> For more than six years the North Carolina Ports Authority has refused to bargain with the International Longshoremen's Association (ILA) as the certified representative of certain Ports Authority Employees under the Railway Labor Act, 45 U.S.C. §§151-188. There has been labor unrest, and disruption of work, including at least one instance of closing the port. On a previous appeal we held [that] the Ports Authority was a 'carrier' within the meaning of the Act, reversing a dismissal of the complaint by the district court...

The Ports Authority and ILA subsequently negotiated two successive contracts covering the employees in the certifications.

CREATION OF THE RAILWAY COMMISSION

The 1979 Session of the North Carolina General Assembly enacted Chapter 159 of the Session Laws, ratified March 1979. This Act was, entitled "An Act to Establish the North Carolina Ports Railway Commission", and codified as North Carolina General Statutes, §§143B-469, et seq. This Commission is governed by a board of five members who are appointed by the Governor for four year terms. All the powers of a body corporate have been granted to the Commission including the power:

> To operate, maintain and control all railway equipment and railway operations transferred to it by the State Ports Authority;
> To acquire, own, lease, locate, install, construct, equip, hold, maintain, control and operate at harbors and seaports terminal railroads in addition to those transferred to it by the State Ports Authority with necessary sidings, turnouts, spurs, branches, switches, yard tracks, bridges, trestles, and causeways and in connection therewith shall have the further right to lease, install, construct, acquire, own, maintain control and use any and every kind or character of motive power and conveyances or appliances necessary or proper to carry goods, wares and merchandise over, along or upon the track of such railway, or other conveyance;
> To make agreements as to scale of wages, seniority and working conditions with railroad employees, including but not limited to, locomotive engineers, locomotive firemen, switchmen, switch engine foremen and hostlers engaged in the operation and servicing of the terminal railways and their equipment;
> To connect with or cross any other railway upon payment of just compensation and to receive, deliver to and transport the freight, passengers and the cars of common carrier railroads as though it were an ordinary common carrier...

In accordance with the mandate of the statute, the Ports Authority and the Railway Commission entered into certain agreements regarding trackage and sale of personal property. In the first agreement, the Ports Authority leased to the Railway Commission certain trackage at Wilmington. This property is to be used by "the Railroad [Railway Commission] for administering, receiving, storing and marshaling railroad cars for delivery to various points on the terminal premises and for reassembly for removal by the Seaboard Coast Line Railroad."

The Port Authority does not own the property, but leases it from the United States Department of Commerce, Maritime Administration. The orginal term of the lease is for 25 years, at a cost of $100 per year. The Port Authority reserves the right and easement of access, ingress, egress and regress over the premises. The Railway Commission assumes liability for damage or injury upon the premises unless caused by the Ports Authority or its agents. Insurance coverage is provided by the Railway Commission.

By the terms of the second agreement (Lease Agreement #2), the Ports Authority grants to the Railway Commission, the right to use, without cost to the Railway Commission, the whole or any part of the sidetrack which serves the port facilities of the Authority, and the facilities of other industries located on or at the Ports. Right-of-way privileges are provided for the Railway Commission upon any property required for the proper operation of the sidetrack. The sidetrack is maintained by the Authority without cost to the Railway Commission.

Liability for damage to the property or injury upon the property shall be borne by the individual responsible. The agreement shall remain in effect unless terminated by either party on 6 months notice.

According to a third agreement, the Ports Authority transferred to the Railway Commission, in consideration of $10.00, certain equipment, rolling stock and other items including 3 portable buildings, several flat cars, and 4 locomotives.

The terms and conditions of a fourth agreement are exactly like those of Agreement #2 except that this agreement covers the following sidetracks:

> A system of tracks with lead tracks diverging from the main track of the Southern Railroad (under lease from the Atlantic & East Carolina Railroad), and being all of the track heretofore constructed or acquired by the Authority at the Port of Morehead City, North Carolina, including the "Fishmeal Warehouse" trackage, said track system being more fully described by reference to a plat entitled "Current Map of NCSPA Morehead City Terminal" which is on file in the Offices of the Railroad and of the Authority.

Under the terms of the final agreement, the Port Authority has leased to the Railway Commission for a period of 25 years, "rail trackage and adjoining right of way necessary for the operations of the Railway Commission." The rental fee is $100 per year. If the property is needed by the Ports Authority for its operations, the lessor has reserved the right to use the property, but must make a reasonable substitution. After expiration of the 25-year period, the lease reverts to a month to month tenancy giving either party the right to terminate upon 60 days written notice.

The Railway Commission has applied for and received a certificate from the Interstate Commerce Commission. ICC Certificate and Decision, Finance Docket No. 29423 (December 12, 1980). Such certification, the Railway Commission argues, was necessary in order to bill for switching services.

ILA's request for reconsideration of the decision granting the certification was denied by the Commission on March 19, 1981. Tariffs governing switching, weighing, and other terminal charges were issued by the Railway Commission on January 8, 1981, effective January 12, 1981.

Offices for the Railway Commission are maintained in Wilmington. The present staff consists of:

General Manager (also Chief Executive Officer)
Secretary and Clerk (who is also Assistant Treasurer of the Commission)
Yard or Railroad Superintendent (Wilmington and Morehead)
7-Engineer/Switchmen (Wilmington)
2-Engineer/Switchmen (Morehead City)

The daily operations of the Railway Commission are handled by the General Manager. At each city, there is a Railroad (Yard) Superintendent who oversees the railroad operations.

Although the railroad operations were transferred, those individuals who performed the work for the Ports Authority were not transferred to the Railroad Commission. The Railway Commission decided to hire its own employees. Individuals had to file applications with the state employment commission. Employees of the Ports Authority were told to file applications but chose not to apply. The Railway Commission employees are not subject to any control or supervision, operational or otherwise, of the Ports Authority or any employee thereof.

The Railway Commission keeps its own records, does its own billing, prepares its own payroll, conducts its own labor relations policy and conducts its business transactions separate from those of the Ports Authority. The Railway Commission secures its own loans and enters into its own contracts, although it cooperates very closely with the Ports Authority in the development of the port facilities.

DISCUSSION

A.

ILA has argued that the reason for the creation of the Railway Commission was to circumvent the Railway Labor Act, nullifying the certifications, and depriving employees of union representation. Investigation did not reveal the reason why the Legislature decided to create the Railway Commission. The evidence before this Board does not support the contention of the ILA that the sole reason for the creation of the Railway Commission was to deny the Ports Authority employees effective collective bargaining representation.

B.

The facts of the present case closely parallel those in South Carolina State Ports Authority, 5 NMB 265 (November 4, 1969). In that case the Board found that the Authority owned and operated port facilities in Charleston, South Carolina, and that terminal railroads were operated as an integral part of such operations. These railroad operations were located in two separate geographical areas of Charleston. These operations included the moving of freight to and from freight cars owned by interstate carriers, switching of railroad cars, and storing freight moved in interstate and foreign commerce. Noting that Title 45 U.S.C., Section 1, First, by its terms expressly covers companies "under common control" with any carrier by railroad, the Board found that the Authority was subject to the jurisdiction of the Railway Labor Act pursuant to Section 1, First, of the Act.

On November 30, 1972, the Authority filed a motion for reconsideration of the above decision and a motion to dismiss the ILA's application for lack of jurisdiction. 5 NMB 327 (1974). The Authority alleged that new developments had occurred concerning the Authority's railroad operations. A hearing was conducted on the question of jurisdiction. Investigation revealed that on July 14, 1969, the Governor of South Carolina signed into law an act creating the South Carolina Public Railways Commission. The act directed that the Ports Authority transfer all control over terminal railroads to the Public Railways Commission. The Public Railways Commission filed an application with the Interstate Commerce Commission seeking transfer of ICC certificates for the operation of the terminal railroads from the Ports Authority to the Public Railways Commission. The Interstate Commerce Commission, approved the acquisition of the terminal railroads by the South Carolina Public Railways Commission. The Ports Authority conveyed, by deed, the two terminal railroads, including all tracks, equipment, trackage rights and labor contracts to the Public Railways Commission. The Public Railways Commission assumed employment obligations for the employees of the terminal railroads previously employed by the Ports Authority.

In reaching its conclusion, the Board noted that:

> The Public Railways Commission is functioning under the day-to-day supervision of a general manager who is not directly or indirectly controlled by the Ports Authority. The Public Railways Commission has been funded by the South Carolina State Legislature and has established offices geographically and organizationally apart and independent of the Ports Authority. The Public Railways Commission has established its own books of account and services customers including, but not limited to, the Ports Authority (Piening affidavit-August 9, 1973).

> In view of the complete legal divestment of ownership and control of the Ports Authority over the common terminal rail carriers, effected through action by the South Carolina State Legislature and the Interstate Commerce Commission, the National Mediation Board now finds no basis for asserting jurisdiction over any employees of the South Carolina State Ports Authority.

C.

The facts and circumstances of the present case are virtually identical to those in South Carolina Ports Authority. No evidence has been presented to warrant a decision different from the one in that case. The Board finds that the Railway Commission is not directly or indirectly owned or controlled by the Ports Authority. The Railway Commission has established its offices geographically and organizationally apart and independent of the Ports Authority. The Railway Commission keeps its own records, conducts its own labor relations policy and conducts its business transactions separate from those of the Ports Authority. Thus, any basis the Board had for asserting jurisdiction over any employees of the North Carolina State Ports Authority has been removed.

The facts, however, show that the Railway Commission has now assumed the Ports Authority's railroad operations. The Board, therefore, finds that the North Carolina Railway Commission is a carrier subject to the jurisdiction of the Railway Labor Act pursuant to Section 1, First, of the Act.

The Board further finds, on the record before it, that the Railway Commission is independent of the Ports Authority. Accordingly, the certifications held by the ILA are no longer of any effect since the Ports Authority is no longer a carrier within the meaning of the Railway Labor Act.

In light of the determinations reached, it is unnecessary for the Board to rule on the motions to strike portions of the ILA brief.

CONCLUSION

For the reasons stated above, the application filed by the International Longshoremen's Association, AFL-CIO is hereby dismissed.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. Dennis Myers
Mr. Grayson G. Kelley
Herzl S. Eisenstadt, Esq.
James K. Larrick, Esq.

RKQ/rwa

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 121

In the matter of the Application of : CASE NO. R-5303

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO : FINDINGS UPON INVESTIGATION

alleging a representation dispute pursuant to the Railway Labor Act, involving employees of : June 9, 1982

EASTERN AIRLINES, INC.

On March 30, 1982, the International Association of Machinists & Aerospace Workers, AFL-CIO (IAM&AW) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving Passenger Service Employees of Eastern Air Lines, Inc. Said application has been docketed as NMB Case No. R-5303.

The Board assigned Board representatives Charles H. Callahan, David M. Cohen, Laurette Piculin, John B. Willits, Joseph E. Anderson, Maurice A. Parker, Robert J. Cerjan and Samuel J. Cognata to investigate.

During the course of the investigation, issues arose concerning the refusal of Board representative Callahan to accept additional authorization cards, and concerning the eligibility of certain employees to vote.

ISSUES

The issues presented are:

1. Whether certain authorization cards should be accepted under the circumstances described below.

2. Whether employees in the positions of Agent/Secretary Airport (Code 700), Agent/ Secretary CTO (Code 712), Agent/Secretary Reservation (Code 731) and SATO Agents (Code 841) are eligible to vote.

3. Whether "Reservation Supervisor Understudies" are eligible to vote.

4. Whether employees on medical disability leave are eligible to vote.

CONTENTION

IAM&AW contends that the Board representative should have accepted the additional authorization cards, and that the employees in the jobs listed above and on medical disability leave are ineligible to vote.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 152. In this connection, the Board finds as follows:

I.

Section 201 of the Act extends all of the provisions of Title I of the Act, except to provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate and foreign commerce...and every air pilot or other person who performs and works as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service."

II.

Eastern Air Lines is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181.

III.

Section 2, Fourth, of the Act 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

IV.

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V.

IAM&AW is a labor organization and representative as defined in Section 1, Sixth, 45 U.S.C. §152, Sixth, and Section 2, Ninth, of the Act.

FINDINGS OF FACT

I.

The IAM&AW filed its Application for Investigation of Representation Dispute on March 30, 1982, and the case was docketed on the same date. On March 31, 1982, the Board assigned Board Representative Callahan to investigate the case on the property, commencing April 20, 1982, and requested a list of potential eligible voters.

Eastern delivered the list of potential eligible voters to the Board's offices in Washington, D.C., at 2:23 p.m. on April 1, 1982, and the IAM&AW was so notified. In addition, the Board advised that receipt of additional authorization cards would be cut off in accordance with the Representation Manual following Mr. Callahan's receipt of the list in Miami, whether from the Board or the carrier. Eastern delivered a copy of the list to Mr. Callahan in Miami at 4:30 p.m. the same day. Mr. Callahan received the copy from the Board at approximately noon on April 2, 1982.

The Board representative refused to accept any authorization cards after 6:00 p.m. on April 2, 1982. IAM&AW attempted to deliver cards after this deadline, but receipt was refused. On May 10, 1982, IAM&AW sent the cards to the Board's Executive Secretary, who returned them, citing United Airlines, 8 NMB No. 203 (1981).

II.

In 1978, IAM&AW attempted to organize Passenger Service Employees of Eastern, NMB Case No. R-4809. A hearing was held to determine what job classifications constituted the craft or class on June 14, 1978.

As reported in the Board's Findings Upon Investigation, 6 NMB No. 1096 (1978),

> By stipulation, the parties agreed that the following classifications should be included in a craft or class of Passenger Service Employees on Eastern Air Lines, Inc.: Agent Reservations Reference; Agent Reservations; Agent Reservation Counter Sales; Agent/Secretary Reservations; Agent Teleticketing; Agent Telesales; Agent Correspondent Reservation Sales; Agent/Secretary Airport; Agent Services Air Freight; Agent Air Freight; Agent Tracing Center; Agent Customer Service (including those performing control or weight and balance functions); Agent Airport Ticket Office; Agent Walt Disney World; Ground Host Hostess; Host/Hostess Ionosphere Lounge; Agent Dining Services; Agent International Sales ATO; Agent SATO; Agent CTO; Agent/Secretary CTO; and Skycaps and Chief Skycaps. (T. 52-53, 102-105). Specifically excluded from the craft or class were employees performing the functions of Controller Payload Control and Customer Service Representative. (T. 104, 51). 6 NMB at 562 fn. 2.

The Board concluded that the classifications of Agent/Secretary Airport (Code 700), Agent/Secretary CTO (Code 712), Agent/Secretary Reservations (Code 731) and SATO Agents (Code 841) were part of the craft or class.

III.

A.

The IAM&AW's initial challenge to "Reservations Supervisors Understudies" stated:

> We have recently received evidence of an additional challenge for employees listed in Job Code 726 with a title of Reservations Supervisors Understudies. It is our understanding that one person holds that position for each full-time supervisor in the Reservations facilities. We have discovered that Supervisor Understudies have the authority to perform supervisor duties as described in the Mediator's Manual. Those duties include taking disciplinary action and recommending suspension with subordinates. Supervisor Understudies monitor telephone calls of subordinates; Supervisor Understudies authorize subordinate work schedule changes and days-off swaps, etc. Based on the Mediator's Manual, it is our position that employees in that category should not vote in Case #5303.

B.

Eastern responded as follows:

> Job Code 726 covers the job classification of Reservations Agent. We do select a number of employees in this job classification as well as in all other Agent jobs (Air Freight, Ticket Counter, Departure, etc.), to act in an understudy capacity. They normally act in such capacity for less than one-half of their regularly assigned work shift. They do not make up or administer work schedules,

> conduct semi-annual employee reviews or evaluations, or authorize or issue passes. They have no authority to schedule over or undertime, or to schedule and award vacations or other forms of leaves.
>
> These employees primarily act in what could be referred to as a "Lead Agent" capacity. These employees do not perform supervisory duties and they have no authority to take disciplinary action in any form. Employees serving in the understudy capacity do so without any salary increase above their regular rate and they normally seek out these positions as a means to familiarize themselves with management techniques and thereby increase their chances for future promotion within the Company.
>
> The union suggestion that these employees be omitted from the eligibility list in Case No. R-5303 is completely without foundation.

C.

No additional evidence is presented in this appeal, and IAM&AW has not identified any individuals who perform these duties.

IV.

A.

The IAM&AW's initial challenge to employees on extended medical leave stated:

> In a review of Eastern Air Lines' eligibility list for Passenger Service Employees we find a large number of employees on extended medical leaves.

Eastern Air Lines has a policy which provides that employees, after two (2) years of medical leave, may be considered as involuntary resignations.

It is our position that all employees in the category should be removed from the list unless there is documentation for each specific employee that he or she has been continued in medical leave status beyond the 2-year period. The appearance of their names on an employee list in that category should not be acceptable evidence, ie., the Company should have a burden of proof of documentation for each employee or that employee should be considered an involuntary resignation, as provided for in Company policy.

B.

Eastern responded as follows:

Any eligible employee may be granted a medical leave of absence. This may entitle the employee to payment of wages for that disability under our short-term disability and long-term disability policy. The employee would continue to receive these benefits so long as:

1. Employee is totally disabled
2. Employee does not retire from Eastern Airlines

This leave is granted for a two-year period as a matter of policy. An employee may return to work prior to the expiration of the two-year period if their medical condition improves and allows them to return. At the expiration of the two-year period, an employee who is still disabled will automatically be granted a one, two, five-year or indefinite extension of the leave as their medical condition requires.

> Employees who are on medical leaves of absence (short-term disability, long-term disability, medical leave) would be returned to active service if:
>
> 1. The employee wishes to return to work, and
>
> 2. There is a position available for which the person is medically and occupationally qualified for by virtue of their current medical status and their training education and experience.

As defined in Eastern's Policy Guide for Non-Contract Employees, a medical leave is granted (without pay) to an employee who has exhausted all sick and industrial leave, and short-term disability benefits. The initial leave is for two years, and the employee will be placed in a vacant position, if one exists, when he is able to return to work. The employee will be deemed to have involuntarily resigned if no job has been found within six months thereafter.

If the employee is medically unable to return to work, and is not permanently and totally disabled, the employee may either retire or be deemed to have involuntarily resigned.

If the employee is permanently and totally disabled, the medical leave may be extended indefinitely until retirement or age 70.

DISCUSSION

I.

The issue of acceptance of additional authorization cards under circumstances where the carrier provides the list of potential eligible voters prior to any on-the-property investigation was settled in United Air Lines, 8 NMB No. 203 (1981), a case in which IAM&AW was a party. In addition, IAM&AW sought judicial review of the Board's decision, *inter alia*, not to accept additional authorizations in that case, and did not prevail. IAM&AW v. NMB, 109 LRRM

2440 (N.D. Cal. 1981).

In accordance with Section 6.3 of the Representation Manual, the receipt of additional authorizations is cut off at 6 p.m. on the date that the Board Representative receives the list, or 6 p.m. on the following day when the list is received after 3 p.m.

IAM&AW was advised immediately when the Board received the list, and was given the full opportunity to submit additional authorizations. In fact, representatives of IAM&AW delivered authorizations to Mr. Callahan prior to the cut-off time, and these were accepted.

The Board finds no basis for accepting the additional authorization cards submitted after the deadline.

II.

In 1978, the Board held a hearing to determine what employee classifications constitute the craft or class of Passenger Service Employees on Eastern. IAM&AW was the applicant in that case.

IAM&AW entered into a stipulation with Eastern that the classifications of Agent/Secretary Airport, Agent/Secretary CTO, Agent/Secretary Reservations, and SATO Agent were part of the craft or class.

No substantive evidence having been offered by IAM&AW to warrant vacating the stipulation or conducting a hearing on the issue, the Board finds no basis for granting the appeal as to these classifications.

III.

IAM&AW has protested inclusion of "understudy" employees on the list of potential eligible voters. In the absence of any substantive evidence refuting the carrier's description of the duties of these "positions", the Board declines to set aside the Board representative's ruling.

IV.

Section 5.306 of the Representation Manual provides:

> Leave of Absence
>
> An employee on authorized leave of absence, including military leave, from the craft or class in dispute who is neither working in another craft or class, working for the carrier in an official capacity nor working for another carrier, will be considered eligible in the craft or class involved in the investigation. For example, an employee upon authorized leave of absence for labor organization activities will be considered eligible, as well as an employee who is on authorized sick leave.
>
> Where the question of leave of absence is contested, the Board representative should require supporting documents to verify that a bona fide leave of absence is in effect. [Emphasis supplied].

Section 5.311 further provides:

> Retired Employees
>
> Employees who have retired shall not be considered eligible to participate. However, an employee receiving physical disability payments shall be considered eligible if the employee retains rights of reemployment. [Emphasis supplied].

The Board has identified ninety people on medical leave, short-term disability, and long-term disability. IAM&AW was offered the opportunity to review the carrier's response regarding each of these individuals, by Mr. Callahan. While the Board agrees that permanently and totally disabled employees have no expectation of returning to work, IAM&AW has identified no employees who fall into that category on the list. Further, a permanently disabled employee may be fully capable of resuming employment, and the Board does not presume that a permanent disability necessarily precludes the employee's return to active service. In addition, if all 90 were removed from the list, it would not materially affect the union's showing of interest. Therefore, the Board finds no basis for further investigation regarding the status of each disabled employee.

CONCLUSION

For the reasons set forth above, the appeal of the IAM&AW is denied.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. W. W. Winpisinger
Mr. William Scheri
Mr. Charles Bryan
Mr. Dwain C. Andrews
William G. Bell, Esq.

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 122

In the matter of the	CASE NO. R-5303
REPRESENTATION OF EMPLOYEES of	DISMISSAL- INSUFFICIENT SHOWING OF INTEREST
EASTERN AIR LINES	June 10, 1982
Passenger Service Employees	

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO, on March 30, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Passenger Service Employees", employees of Eastern Air Lines.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representatives Charles H. Callahan, David M. Cohen, Laurette Piculin, John B. Willits, Joseph E. Anderson, Maurice A. Parker, Robert J. Cerjan and Samuel J. Cognata to investigate.

FINDINGS

The Investigator's investigation established that the organization had failed to support its application with the required number of authorizations from the employees in the craft or class as set forth in Part 1206.2(b) of the National Mediation Board Rules.

Therefore, the Board finds no basis upon which to proceed in this matter and the application is hereby dismissed subject to Part 1206.4 of the NMB's Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 123

In the matter of the Application of	FILE NO. CR-5297
BROTHERHOOD OF RAILWAY, AIR-LINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES	FINDINGS UPON INVESTIGATION June 14, 1982
pursuant to Section 2, Ninth, of the Railway Labor Act, involving employees of	
UNION PACIFIC RAILROAD	

On February 16, 1982, the Brotherhood of Railway Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, (BRAC) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving "Terminal Specialists (Traveling Teleprinter Supervisors), Communications Department: an accretion to the craft or class of Clerical, Office, Station and Storehouse Employees represented by BRAC", employees of the Union Pacific Railroad (UP). File No. CR-5297 was assigned to this application for purposes of investigation.

At the time the application was filed, Terminal Specialists on the UP were represented by the International Brotherhood of Electrical Workers (IBEW) pursuant to a voluntary recognition agreement dated January 25, 1982, as part of the craft or class of Electrical Workers. NMB Case No. R-350 (1937). BRAC represents the craft or class of Clerical, Office, Station and Storehouse Employees pursuant to a voluntary recognition agreement. See, Union Pacific RR, 8 NMB No. 127 (1981) at 438-9.

IBEW and BRAC have submitted extensive statements of position and evidence in connection with the BRAC application. UP has taken no position in this matter.

In its statement of position, IBEW has moved to have the BRAC application dismissed. BRAC, in response, requests that the Board determine in which craft or class the Terminal Specialists are properly included.

FINDINGS OF FACT

I.

BRAC represents the craft or class of Clerical, Office, Station and Storehouse Employees on the Union Pacific. In addition, under the same collective bargaining agreement, BRAC represents Telegraphers who previously had been represented by the Order of Railroad Telegraphers (ORT), which later changed its name to Transportation-Communication Employees Union (TCEU). TCEU merged with BRAC in 1969.

The scope rule of the BRAC-Union Pacific agreement provides, in pertinent part:

RULE 1. SCOPE

(a) These rules govern the Hours of Service rates of pay and working conditions of the employees engaged in the work of the craft or class of clerical, office, station, tower and telegraph service and store house employees as such craft or class is or may be defined by the National Mediation Board.

(b) The work of the craft or class includes the writing or calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and similar work and to the operation of the following machines or devices or similar equipment or new office mechanical or electronic equipment or devices when used in the performance of work within the scope of this agreement:

Typewriters
Adding Machines
Calculating Machines
Bookkeeping Machines
Accounting Machines
Timekeeping Machines
Statistical Machines
Teletype Machines
Dictaphone Machines
Keypunch Machines
Electronic Accounting Machines
Cathode Ray Tube Machines

(c) The following positions or work is subject to the provisions of this agreement:

TELEGRAPHERS. Agents, agent-telegraphers, agent-telephoners, telegraphers, telephoners, telegrapher-clerks, telephoner-clerks, telegrapher-car distributors, ticket clerk-telegraphers, telegrapher-switchtenders, C.T.C. telegraphers, train and tower directors, towermen, levermen, block operators, staffmen, managers, wire chiefs, repeater chiefs, chief operators, printer mechanicians, telephone operators (except switchboard operators), teletype operators, printer operators, agents non-telegraphers, and agents non-telephoners.

OTHERS. Office, station and stores employees, such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employes (other than clerks), train and engine crew callers, station helpers, telephone switchboard operators, elevator operators, and watchmen (except in Special Service Department) employes engaged in assorting waybills and/or tickets, operators of office or station equipment devices, and appliances or machines for perforating, addressing envelopes, numbering claims and other papers, gathering and distributing mail, adjusting dictating machine cylinders and other analogous service; laundry workers, janitors and laborers employed in and around offices, stations, storehouses and warehouses.

NOTE: The foregoing listing of positions is for reference and identification purposes only. Such listing does not restrict inclusion within the Scope of the Agreement any positions not specifically listed above.

(d) EXCEPTIONS:

. . . .

(Emphasis supplied).

II.

In 1974, negotiations began between BRAC and the various railroads with which it had agreements, including the Union Pacific. One of the items proposed by BRAC was the amendment of the Scope Rule, which had remained virtually unchanged since 1920. The proposed changes would mean the inclusion of previously "excluded" employees in the agreement.

The parties were unable to reach agreement during their negotiations. Consequently, in 1975, the President appointed Emergency Board #186 to deal, inter alia, with this issue. The Board recommended negotations on a carrier-by-carrier basis and further stated, "in order to give impetus to local negotiations...a national goal [should] be established to convert 10% of fully excepted or partially excepted positions to 'covered' status within 90 days after signing of an agreement." The Board went on to say that "initiative for identifying these positions in the first instance should rest with the Carrier..." Report to the President by Emergency Board No. 186, 26, 27.

Between 1975 and 1979, BRAC and the Union Pacific continued to negotiate over the proposed amendments to the Scope Rule without success. Agreement was finally reached on April 17, 1980, with respect to many positions. However, there was no agreement with respect to a number of positions which BRAC intends to bring under the Scope Rule in the next round of negotiations.

III.

On January 25, 1982, IBEW and the Carrier entered into an agreement under which Terminal Specialists would be represented by IBEW, effective February 1, 1982. The position was placed within the Scope Rule of the existing IBEW-Union Pacific collective bargaining agreement, subject to certain limitations.

On January 29, 1982, BRAC filed suit against the Union Pacific and IBEW to enjoin implementation of the January 25 agreement. The United States District Court for the District of Nebraska issued a temporary restraining order (TRO) suspending implementation of the agreement. On February 19, 1982, the court dissolved the TRO and dismissed the suit. BRAC v. Union Pacific Railroad, Civ. 82-0-35 (D. Neb. 1982).

As stated by the court, "BRAC contends that implementation of the U.P.-IBEW agreement would violate U.P.'s labor contract with BRAC by unilaterally transferring to IBEW work which has traditionally been performed by employees within the craft or class represented by BRAC." Slip op. at 1-2. The court concluded that a "jurisdictional or representational dispute between two labor organizations" existed, that the NMB had exclusive jurisdiction over the issue (and that BRAC had filed an application with the Board), and that the court lacked subject matter jurisdiction over the dispute.

IV.

A.

BRAC asserts that the position of Terminal Specialist derives from the position of Printer Mechanician formerly represented by the Order of Railroad Telegraphers. The lineage of the Terminal Specialist job is traced from 1935 to the present, through such titles as Chief Operator-Printer Mechanician (1945), Managers (1965), Traveling Relief Chief Operator Printer Mechanician (1966), Chief Operator (1970), Traveling Relief Chief Operator (1970). The position of Wire Chief is also asserted to be a predecessor to the Terminal Specialist Classification.

IBEW asserts that Traveling Teleprinter Supervisors were first appointed in 1967. The title was changed to Terminal Specialist in 1982.

Throughout the historical recitation by both unions, no showing has been made which establishes that any of the ORT-represented positions evolved into the position of Terminal Specialist. It is not possible, therefore, to state whether a direct chronological progression exists.

B.

The essence of the BRAC-IBEW disagreement centers on whether the work involved is the installation and routine maintenance on teleprinters, or whether it is repair work.

DISCUSSION

I.

It is well-settled that, in the railroad industry, jurisdictional disputes between labor organizations involving employees of a carrier are within the jurisdiction of the National Railroad Adjustment Board (NRAB), at least insofar as each organization bases its claim to the work on an existing collective bargaining agreement, rather than a certification issued by the National Mediation Board.

Neither Federal courts, General Committee of Adjustment - BLE v. Missouri-Kansas-Texas Railroad Co., 320 U.S. 323 (1943); Order of Railway Conductors v. Pitney, 326 U.S. 561 (1946), nor state courts, Slocum v. Delaware L. & W. Railroad, 339 U.S. 239 (1950), have jurisdiction to interpret railroad collective bargaining agreements. The NRAB has exclusive jurisdiction to adjust grievances and disputes involving the scope of collective bargaining agreements where two or more unions claim the same work. Id.; Transportation Communication Employees Union v. Union Pacific Railroad, 385 U.S. 157 (1966), reh. den. 385 U.S. 1032 (1967). All interested unions have the right to be heard by the Adjustment Board. Id.

No part of the Railway Labor Act parallels Section 10(k) of the National Labor Relations Act, 29 U.S.C. §160(k), which empowers the National Labor Relations Board to hear and decide inter-union jurisdictional disputes. The general language of Section 5, First (b) and Section 203(b) by their terms permit a party to invoke the Board's services to resolve disputes only when those disputes are not referable to the NRAB or an adjustment board.

II.

The jurisdiction of the National Mediation Board to determine which employees may be eligible to vote in a representation election pursuant to Section 2, Ninth, is not adversely affected by the decisions discussed above.

Where an organization files an application to represent an entire craft or class, or seeks an accretion election to a certified craft or class which it already represents, the Board will make the determinations necessary to the holding of the election. See, Howard v. St. Louis-San Francisco Railway, 361 F.2d 905 (8th Cir. 1966), cert. den. 385 U.S. 986 (1966). Voluntary recognition agreements do not bar an NMB determination of craft or class under Section 2, Ninth, which may be different from the private arrangement between the parties. However, absent such circumstances, the Board has long held a policy of not interfering with voluntary recognition agreements, and does not conduct accretion elections in the absence of an underlying certification. Union Pacific Railroad, 8 NMB No. 127 (1981).

III.

The case before the Board involves a claim by BRAC that the carrier has violated the Scope Rule of its collective bargaining agreement by assigning certain work to the IBEW. Resolution of this issue requires an interpretation of the BRAC agreement, in light of the IBEW agreement, and railroad usage, practice, and custom.

The court, lacking familiarity with the Board's procedures, ascribed exclusive jurisdiction to the NMB. In this regard, the BRAC application may have pointed the court in that direction. IBEW argued that Section 3 minor dispute resolution procedures should be followed, but BRAC did not move before the NRAB, and the court might have reached a different conclusion had it done so.

It is clear from the preceding discussion that the basic issue in this matter is the proper reach of the Scope Rule in the BRAC-Union Pacific collective bargaining agreement, and whether the carrier violated that Rule by recognizing IBEW as the representative of the subject employees. As such, the issue is a minor dispute which must be adjusted under the procedures of Section 3 of the Act, rather than a representation dispute referrable to this Board under Section 2, Ninth.*/ The NMB has always refrained from injecting itself into jurisdictional disputes of this type. See, e.g., Chicago & Northwestern Railway, 1 NMB 130 (1938).

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*/ BRAC has withdrawn its request for an accretion election, thereby vitiating this Board's jurisdiction under Section 2, Ninth. BRAC's withdrawal of the request is premised upon the Board's policy of not conducting an accretion election in the absence of an underlying certification covering the entire craft or class. Should BRAC file an application for investigation of a representation dispute seeking certification covering the entire craft or class as determined by the NMB, a representation dispute would then exist and a determination by the NMB as to these employees would be required.

CONCLUSION

The subject matter of the instant investigation concerns a minor dispute subject to the procedures of Section 3 of the Railway Labor Act. Under the circumstances present here, the National Mediation Board has no jurisdiction to act pursuant to Section 2, Ninth, of the Act.

The application filed by BRAC is hereby dismissed.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. R. I. Kilroy
James L. Highsaw, Esq.
William J. Donlon, Esq.
Mr. A. M. Ripp
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Mr. P.A. Jordan

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 124
June 25, 1982

Mr. Peter E. Stangl, President
Metro-North Commuter Rail Division
Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10017

Re: Factfinding Panels Established Pursuant to Section 509 of the Rail Passenger Service Act, as Amended

Dear Mr. Stangl:

This is in response to your letter dated June 22, 1982 requesting the National Mediation Board to reconsider its Determination of June 4, 1982 (9 NMB No. 119) regarding the factfinding panels provided for by section 509 of the Rail Passenger Service Act, as amended. The Board has given this matter consideration, but has determined not to withdraw or revise its Determination of June 4, 1982.

Subsection 509(a) of the Rail Passenger Service Act, as amended, provides in relevant part:

> "Amtrak Commuter or a commuter authority and the representatives of the various crafts or classes of employees to be transferred to Amtrak Commuter or such commuter authority shall, by May 1, 1982, establish a factfinding panel...."

The National Mediation Board is not mentioned in section 509 of the amended Rail Passenger Service Act until subsection (b):

> "The National Mediation Board shall appoint public members to the panel established under subsection (a) of this section."

Based on your letter of June 22, 1982, we understand the Metropolitan Transportation Authority is dissatisfied that the "representatives of the various crafts or classes of employees" have not joined with it to establish a factfinding panel pursuant to subsection 509(a) of the Act. However, neither the Rail Passenger Service Act nor any other statutory authority grants this Agency the jurisdiction to adjudicate or take any enforcement action with respect to that matter. Presumably, should the MTA wish to accomplish the results it seeks, i.e., the establishment of a factfinding panel, it could invoke the jurisdiction of the Federal Courts to review that issue.

The statutory language of subsection 509(a) of the Act expressly requires that both a "commuter authority *and* the representatives of the various crafts or classes of employees" (emphasis added) must undertake to "establish" a factfinding panel. As the Board's June 4, 1982 Determination found, it would be an act of complete futility for this Agency to purport to appoint a "public member" to a panel which had not yet been "established" under subsection 509(a). Further, it is clear from the statutory language, format and context that the reference to May 1, 1982 in subsection 509(a) solely pertains to the parties' establishment of factfinding panels, not to any action by the NMB.

In reviewing this matter upon reconsideration, the Board herein incorporates the complete reasoning and conclusions of its June 4, 1982 Determination and declines to amend any portion thereof.

By Direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

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(See Attached Listing)

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RKQ/rec

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 125

June 25, 1982

Daniel M. Katz, Esq.
Connerton & Bernstein
Suite 800
1899 L Street, N.W.
Washington, DC 20036

Mr. J. J. O'Donnell, President
Air Line Pilots Association
1625 Massachusetts Avenue, N.W.
Washington, DC 20036

Re: Overseas National Airways

Gentlemen:

This will acknowledge receipt of the "Petition for Confirmation of Collective Bargaining Representative" filed by the Overseas National Airways' Master Executive Council of ALPA, as well as Mr. Katz's letter of June 14, 1982, and Mr. O'Donnell's letter of June 14, 1982.

The Board's records indicate that the Air Line Pilots Association was certified to represent the craft or class of Pilots on ONA in Case No. R-3086 (1956). In this case, as in all other cases, the Board certifies the international labor organization as the representative of the employees in the appropriate craft or class. The Board has a long-standing policy of restricting invocation of its services under Section 2, Ninth, to the chief executive officer of the labor organization, or a person authorized by him to file an application in his stead. In this regard, you should refer to Section 1203.2 of the Board's Rules, 29 CFR Part 1203.

Accordingly, on the basis of Mr. O'Donnell's advice that ALPA has not authorized the filing of the above-referenced Petition, the Board finds no basis for proceeding with an investigation of the Petition. We are returning the materials submitted by Mr. Katz under separate cover. This action is without prejudice to any future action in this matter by ALPA.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copy to:

Mr. Arthur A. Brennan

RKQ/dcb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 126

In the matter of the	
REPRESENTATION OF EMPLOYEES	CASE NO. R-5301
of	CERTIFICATION
SOUTHWEST AIRLINES, INC.	
Fleet Service Employees	June 28, 1982

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters on March 8, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as Fleet Service Employees, employees of Southwest Airlines, Inc.

At the time this application was received, these employees were represented by the International Association of Machinists and Aerospace Workers, AFL-CIO.

The Board assigned Board Representative Robert B. Martin and John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Fleet Service Employees, and by direction of the Board, Board Representative Willits was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative John B. Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

Fleet Service Employees	IAM&AW	IBT	Other	Void	Number of Employees Eligible
	211	41	0	17	410

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Association of Machinists & Aerospace Workers, AFL-CIO has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Fleet Service Employees, employees of Southwest Airlines, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dcb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 127

In the matter of the
REPRESENTATION OF EMPLOYEES
of
SOUTHWEST AIRLINES, INC.
Passenger Service Employees

CASE NO. R-5302

CERTIFICATION

June 28, 1982

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters on March 8, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as Passenger Service Employees employees of Southwest Airlines, Inc.

At the time this application was received, these employees were represented by the International Association of Machinists and Aerospace Workers, AFL-CIO.

The Board assigned Board Representative Robert B. Martin and John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Passenger Service Employees and by direction of the Board, Board Representative Willits was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative John B. Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

Passenger Service Employees	IAM&AW	IBT	Other	Void	Number of Employees Eligible
	330	105	*10	18	616

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Association of Machinists & Aerospace Workers, AFL-CIO has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Passenger Service Employees, employees of Southwest Airlines, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

---

*1 vote cast for the United Automobile Workers
8 votes cast for the Transport Workers Union of America
1 vote cast for the Air Transport Employees

RKQ/dcb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 128

In the matter of the	
REPRESENTATION OF EMPLOYEES	CASE NO. R-5311
of	DISMISSAL-WITH-DRAWN DURING INVESTIGATION
PATAPSCO & BACK RIVERS RAILROAD COMPANY	
	June 28, 1982
Carmen	

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters on May 17, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, the craft or class of Carmen, employees of Patapsco & Back Rivers Railroad Company.

At the time this application was received by the Board, these employees were represented by the Brotherhood Railway Carmen of the U.S. & Canada.

Subsequently, Mr. Norman Greene, Director-Airline Division, International Brotherhood of Teamsters, filed a letter with the NMB dated June 24, 1982, withdrawing the application of that organization for the services of the Board in this matter.

On the basis of the letter of withdrawal referred to above, the National Mediation Board hereby dismisses the IBT's application and closes its files in Case No. R-5311 subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dcb

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 129

In the matter of the
REPRESENTATION OF EMPLOYEES
of
AEROMECH AIRLINES
Fleet and Passenger Service Employees

CASE NO. R-5309
DISMISSAL
June 29, 1982

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters, on April 26, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as (1) Fleet Service Employees and (2) Passenger Service Employees, employees of Aeromech Airlines. These applications were docketed as Case Nos. R-5308 and R-5309, respectively.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The Board representative's investigation established that the carrier utilized a single classification of "Agent" to perform both Fleet Service and Passenger Service functions, that the employees in this classificaiton were preponderantly involved in Passenger Service work, and that no other employees performed identifiable Fleet Service duties on this carrier.

On the basis of this investigation, the Board finds that a single craft or class of Fleet and Passenger Service Employees exists on Aeromech based upon the composite nature of the subject job classifications. See, e.g., Japan Air Lines, 7 NMB No. 109 (1980).

The application in Case No. R-5309 is hereby dismissed. The craft or class designation in Case No. R-5308 is hereby amended to cover Fleet and Passenger Service Employees.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dcb

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 130

In the matter of the Application of the	CASE NO. R-5304
INTERNATIONAL BROTHERHOOD OF TEAMSTERS	FINDINGS UPON INVESTIGATION - DISMISSAL
alleging a representation dispute to Section 2, Ninth, of the Railway Labor Act	July 7, 1982
involving employees of	
MERCURY REFUELING, INC.	

On March 29, 1982, the International Brotherhood of Teamsters (IBT) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving Fleet Service Employees of Mercury Refueling, Inc. (MRI) described as "Aircraft Fuelers and Refuelers". This application was docketed as NMB Case No. R-5304.

At the time the application was filed, these individuals were not represented by any labor organization.

The Board assigned Board Representative Mary L. Johnson to investigate. During the course of the Board's investigation, two issues arose. The first was whether the National Mediation Board has jurisdiction over employees of MRI. The second was, if so, whether fuelers and refuelers at MRI's LAX location were separate and distinct from similar employees at MRI's other locations.

BACKGROUND

On July 27, 1981, the IBT filed applications to represent both "Fleet Service" and "Mechanics and Related Employees" of Mercury Services, Inc. The

Board had declared Mercury Services, Inc. a common carrier by air as defined in Title II, Section 201 of the Act, 45 U.S.C. §181 in Mercury Services, Inc., 8 NMB No. 13 (1981). The carrier contended in response to the IBT's July, 1981, application that the proper craft or class for representation purposes was individuals employed by Mercury Services, Inc., Mercury Refueling, Inc., and Crew Transit, Inc., each of which is a wholly owned subsidiary of IPM Technology, and Reno Flying Service, a division of IPM Technology.

In 9 NMB No. 34 (1981), the Board found:

> The investigation reveals that Mercury Services, Mercury Refueling, Crew Transit and Reno Flying are separate companies and each must meet the standards of the Act for the Act to apply to its operations.
>
> (Emphasis added)

CONTENTIONS

In response to the IBT's application in the present case, MRI argues that it is not a carrier under the Railway Labor Act, and that in any case the appropriate craft or class encompasses all fleet service employees at all MRI locations.

To buttress its claim, MRI has submitted a copy of the representation petition it filed with the National Labor Relations Board. (NLRB)

The IBT maintains that MRI fleet service employees at LAX are an appropriate craft or class for purposes of representation under the Act.

FINDINGS OF LAW

Determination of the issues here involved is governed by Section 201, Title II, and Section 2, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§ 181, 182. In this connection, the Board finds as follows:

I.

Section 201 of the Act, extends all of the provisions of Title I of the Act, except the provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce...and every air pilot or other person who performs any work as an employee or subordinate official of such carrier, subject to its or their continuing authority to supervise and direct the manner or rendition of his service."

II.

Mercury Services, Inc., is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181. See Mercury Services, Inc., 8 NMB No. 13 (1980); 9 NMB No. 34 (1981).

III.

Section 2, Fourth, of the Act, 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representatives of the craft or class for the purposes of this Act."

IV.

The IBT is a labor organization and representative as defined in Section 2, Sixth, 45 U.S.C. §151, Sixth, and Section 2, Ninth, of the Act.

FINDINGS OF FACT*/

I.

Mercury Refueling is a Nevada Corporation which provides fueling and refueling services at several locations to various airlines and the United States

---

*/ The Board has considered the records developed in NMB File No. CJ-4963 and Case Nos. R-5250 and R-5251 in making the determination in the present case. The records of those cases and the file are incorporated herein. The Board Representative assigned to the case at hand specifically inquired of the company representative if there were any new or different facts which had arisen since the previous investigations. The response was in the negative.

Department of Defense. Its facilities are located in California, Nevada, Washington and Arizona. At five of these bases, Bakersfield, Burbank, Los Angeles, Modesto and Santa Barbara, MRI services corporate, commercial, and general aviation customers. The remaining eight MRI bases service military customers.

II.

MRI's base at Los Angeles (LAX) handles the bulk of MRI's commercial work. At LAX, MRI functions primarily as an independent agent for Chevron, Inc.

III.

Mercury Refueling at Los Angeles is located at 6851 West Imperial Highway. This is the same location as that of Mercury Services, Inc. MRI's Los Angeles employees are under the day-to-day control of Kevin Walsh, Executive Vice-President of Mercury Services and Mercury Refueling. Both companies (as well as Crew Transit, Inc.) use the same Payroll Department.

DISCUSSION

I.

Mercury Refueling at LAX employs fuelers/refuelers, as well as mechanics whose main function is to maintain the fuel trucks. MRI at LAX provides fueling services under two types of contractual arrangements. As an independent agent of Chevron, Inc., MRI fuels planes for Chevron's customers. Additionally, MRI contracts directly with certain carriers such as Arrow Airways, to sell and deliver jet fuel.

In several recent decisions involving employees of companies which perform various services for common carriers, the Board has considered two factors. One factor is the degree of control exerted by the carrier over the employment policies and practices of the servicing company. The other is whether the activities performed by the servicing company are those traditionally performed by employees of carriers in the industry, and which would be subject to the Railway Labor Act were they performed by employees of the carriers. See, e.g., Ground Services, Inc., 7 NMB No. 266 (1980).

The Board asserted jurisdiction over Mercury Services because the company's contracts with the carriers for which it performs various services subject MSI's employees to the carriers' control. The work performed by MSI's employees is that primarily performed by Fleet Service or Mechanics and Related employees of common carriers by air.

Mercury Refueling is a sister corporation of Mercury Services, Inc. As a consequence, both companies share high-level management. Additionally the companies share the same industrial relations department and rely upon the same dispatch department to inform their employees of schedule changes. Due to the fact that MRI at LAX is housed in the same building as Mercury Services, Inc. it is not surprising that employees of both companies are in daily contact. However, there are important distinctions between the two corporations.

MRI and MSI do not necessarily have contracts with the same carriers. Where both companies have contracts with the same carriers, the contractual terms are quite different. MRI's employees are not subject to the degree of control by the carriers that the employees of MSI are. Furthermore, although Walsh, as Vice-President of Operations, exercises a great deal of control over both companies, each company has its own supervisory structure and does its own hiring, firing, and disciplining of its employees. Where MSI employees perform maintenance work for MRI, MRI is billed for MSI's services.

It is common practice in the airline industry for carriers to contract with fuel companies to provide fueling services. The storage tanks, fuel supplies, and fueling trucks are generally owned and maintained by the fuel company. The actual fueling and re-fueling work is not performed by the airlines fleet service employees, but by employees of the fuel company, or an independent fueling service.

Where the National Mediation Board has asserted jurisdiction over a company which provides fueling service, it has done so because there has been a substantial degree of integration of operations between the carrier and the fueling company. See, e.g., Air Cleveland, 8 NMB No. 17 (1980). As the Board stated in 9 NMB No. 34, "There is virtually no functional integration of operations or personnel between Mercury Services, Mercury Refueling, Crew Transit or Reno Flying."

II.

The NLRB sought the opinion of this Board as to whether Mercury Services, Mercury Refueling, and Crew Transit were carriers subject to the Railway Labor Act. In submitting the question to us, the NLRB provided a case record which, by stipulation of the union and the three companies, treated all three companies as a single employer for purposes of bargaining unit determination. This Board was of the opinion that the companies, treated as a single entity, were a carrier subject to Title II of the Railway Labor Act. 8 NMB No. 13 (1980). The Board was, however, presented with insufficient evidence to make a determination whether Mercury Refueling, by itself was a carrier subject to the Railway Labor Act.

The National Mediation Board commenced its own full-scale investigation in November 1981. The investigation revealed that most of the information supplied to this Board by the NLRB in 1980 did not apply to Mercury Refueling or Crew Transit, Inc. As a result, it is the Board's determination that its opinion in 8 NMB No. 13 was limited to Mercury Services, Inc. only, and that each of the companies covered by the IBT's original application must individually meet the standards of the Railway Labor Act.

On the basis of the Board's investigations in Case Nos. R-5250 and R-5251 and the present case, the Board has determined that MRI does not meet the definition of a "carrier" under Title II, Section 201 of the Railway Labor Act. MRI's employees do not perform work of a nature traditionally performed by airline fleet service employees, nor are they subject to control by a common carrier under the Railway Labor Act. The National Labor Relations Board is the proper agency to take jurisdiction.

CONCLUSION

Based on the reasons stated above, the Board finds that Mercury Refueling, Inc., is not a common carrier within the meaning of the Railway Labor Act. The application is hereby dismissed.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/mja

Copies to:

Clifford P. Chaiet, Esq.
Kenneth Young, Esq.
Mr. Kevin Walsh
Mr. Norman Greene
National Labor Relations Board

1934

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

9 NMB No. 131

In the matter of the : CASE NO. R-5315
REPRESENTATION OF EMPLOYEES : DISMISSAL-INSUFFICIENT SHOWING OF INTEREST
of :
TEXAS INTERNATIONAL AIRLINES, INC. : July 19, 1982
Office, Clerical, Fleet and Passenger Service Employees :

The services of the National Mediation Board were invoked by the Air Line Employees Association, on June 4, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Office, Clerical, Fleet and Passenger Service Employees", employees of Texas International Airlines, Inc.

At the time this application was received by the Board, these employees were represented by the International Brotherhood of Teamsters.

The Board assigned Board Representative Maurice A. Parker to investigate.

FINDINGS

The Investigator's investigation established that the organization had failed to support its application with the required number of authorizations from the employees in the craft or class as set forth in Part 1206.2(b) of the National Mediation Board Rules.

Therefore, the Board finds no basis upon which to proceed in this matter and the application is hereby dismissed subject to Part 1206.4 of the NMB's Rules.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 132

In the Matter of the
INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO
and
TEXAS AIR CORPORATION
and
TEXAS INTERNATIONAL AIRLINES
and
NEW YORK AIR

FILE NO. CR-5177
ORDER
July 19, 1982

On May 21, 1981, the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), filed a petition with the Board requesting "clarification of Board policy and...technical amendment of certifications." The National Mediation Boad issued a Notice of Hearing on June 4, 1981, on the question of whether Texas Air Corporation (TAC), Texas International Airlines (TXI), and New York Air (NYA) constituted a single carrier for purposes of representation under Section 2, Ninth, of the Railway Labor Act.

On July 13, 1981, the International Brotherhood of Teamsters (IBT) was given leave to intervene in this matter. On August 14, 1981, the Air Line Pilots Association (ALPA) entered its appearance as did the Association of Flight Attendants on August 17, 1981.

The Board held hearings on this matter over the course of the ensuing several months. On June 30, 1982, a post-hearing conference was held and on July 2, 1982, a briefing schedule was issued by Hearing Officer Mary L. Johnson.

On July 13, 1982, shareholders of Texas Air Corporation and Continental Airlines, Inc. (Continental) officially approved a merger between the two corporations. The resulting potential for integration of operations between Continental and Texas International Airlines has a direct bearing on the issues before the Board in NMB File No. CR-5177.

NOW, THEREFORE, pursuant to Section 2, Ninth, of the Railway Labor Act, 45 U.S.C. §152, Ninth, TAC, TXI, and Continental are hereby ORDERED to submit to the Board by September 7, 1982, all corporate documents relating to the integration of operations between TXI and Continental, including all documents relating to labor relations matters. In addition, Texas Air Corporation, Texas International, Continental Airlines, the Airline Pilots Association, the Association of Flight Attendants, the International Association of Machinists, the International Brotherhood of Teamsters, the Transport Workers Union of America and the Union of Flight Attendants are ORDERED to submit any and all agreements dealing with the merger between Texas Air Corp. and Continental Airlines, Inc. to the Board by September 7, 1982. Where no final agreements have been reached, draft versions of both company and union positions must be submitted.

The briefing schedule set by Hearing Officer Mary L. Johnson on July 2, 1982, is hereby cancelled.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/mja

cc: Michael Abram, Esq.
David Gzesh, Esq.
John O'B. Clarke, Esq.
John J. Gallagher, Esq.
Saul Kramer, Esq.
Joseph R. Weeks, Esq.
Mr. J. J. Kerrigan
Ms. Darenda Hardy
Mr. George A. Warde

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 133

In the matter of the
REPRESENTATION OF EMPLOYEES
of
EMPIRE AIRLINES, INC.
Mechanics & Related Employees

CASE NO. R-5306
DISMISSAL
July 19, 1982

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW), on May 5, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Mechanics & Related Employees", employees of Empire Airlines, Inc.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Joseph E. Anderson to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Mechanics and Related Employees, and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative John B. Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IAM&AW	Number of Employees Eligible
Mechanics & Related Employees	5	67

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 134

In the matter of the : CASE NO. R-5307
REPRESENTATION OF EMPLOYEES : DISMISSAL
of : July 19, 1982
EMPIRE AIRLINES, INC. :
Stock Clerks :

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW), on May 5, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Stock Clerks", employees of Empire Airlines, Inc.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Joseph E. Anderson to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Stock Clerks and by direction of the Board the Board representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative John B. Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IAM&AW	Number of Employees Eligible
Stock Clerks	0	9

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 135

In the matter of the
REPRESENTATION OF EMPLOYEES
of
METRO AIRLINES
Pilots and Co-Pilots

CASE NO. R-5313
CERTIFICATION
July 21, 1982

The services of the National Mediation Board were invoked by the Air Line Pilots Association, International (ALPA) on June 4, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Pilots and Co-Pilots", employees of Metro Airlines.

At the time this application was received, these employees were represented by the International Brotherhood of Teamsters (IBT).

The Board assigned Board Representative Maurice A. Parker to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Pilots and Co-Pilots, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative John B. Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IBT	ALPA	Number of Employees Eligible
Pilots & Co-Pilots	1	156	168

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Air Line Pilots Association, International, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Pilots and Co-Pilots, employees of Metro Airlines, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/oma

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 136

In the matter of the : CASE NO. R-5314
REPRESENTATION OF EMPLOYEES : CERTIFICATION
of : July 28, 1982
COMMUTER AIRLINES, INC., d/b/a COMMUTER FREEDOM AIRLINES :
Pilots and Co-Pilots :

The services of the National Mediation Board were invoked by the Air Line Pilots Association (ALPA), on June 4, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Pilots and Co-Pilots", employees of Commuter Airlines, Inc., d/b/a Commuter Freedom Airlines.

At the time this application was received, these employees were represented by the Commuter Airlines Pilots Association (CAPA). By telegram dated June 25, 1982, Mr. James Romagnolo, President, Commuter Airlines Association disclaimed interest in the dispute.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Pilots and Co-Pilots, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	ALPA	Number of Employees Eligible
Pilots & Co-Pilots	28	28

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Air Line Pilots Association, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Pilots and Co-Pilots, employees of Commuter Airlines d/b/a Freedom Airlines, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 137

In the matter of the	CASE NO. R-5317
REPRESENTATION OF EMPLOYEES	CERTIFICATION
of	August 11,1982
ALIQUIPPA & SOUTHERN RAILROAD COMPANY	
Locomotive Firemen	

The services of the National Mediation Board were invoked by the Brotherhood of Locomotive Engineers (BLE) on June 11, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Locomotive Firemen", employees of the Aliquippa & Southern Railroad Company.

At the time this application was received, these employees were represented by the United Transportation Union (UTU). By telegram dated June 25, 1982, the UTU advised the National Mediation Board that it did not wish to participate in this investigation.

The Board assigned Board Representative Thomas C. Kinsella to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Locomotive Firemen, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Mary L. Johnson, who was assigned to count the ballots in this case.

Number of Employees Voting:

	BLE	Any Other Org. or Individual	Number of Employees Eligible
Locomotive Firemen	20	1*	21

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Brotherhood of Locomotive Engineers, has been duly designatedand authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Locomotive Firemen, employees of the Aliquippa & Southern Railroad Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Rowland K. Quinn, Jr.
Executive Secretary

RKQ/mja

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* 1 write-in vote for the United Transportation Union

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 138

In the Matter of

ARBITRATION

Pursuant to Subsection 508(d)
of the Rail Passenger Service
Act, as Amended

August 12, 1982

NOTICE AND ORDER

NOTICE AND BACKGROUND

Section 1145 of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) amended Title V of the Rail Passenger Service Act by adding a new Section 508. Section 508 is entitled Transfer of Employees and is codified at 45 U.S.C. §588.

Subsection 508(d)(1) of the Rail Passenger Service Act, as amended, provides that unless agreements have been reached by August 1,1982 for the matters subject to negotiation under Section 508 "the parties to the negotiations" shall select a neutral referee within an additional five days. Should the "parties" be unable to agree on the selection of the referee during that time, the National Mediation Board shall make such appointment(s).

Subsection 508(d)(3) of the Rail Passenger Service Act, as amended, provides that the National Mediation Board "shall fix and pay the compensation of such referees" appointed pursuant to Subsection 508(d)(1).

On August 11, 1982, the National Mediation Board conducted an informal meeting regarding various aspects of the arbitration provided for by Subsection 508(d). The Board's Chairman, Robert O. Harris, presided at that meeting. Representatives for many of the interested labor organizations and commuter authorities, as well as Conrail and Amtrak Commuter, attended that meeting and participated in the discussions.

The August 11, 1982 meeting served to identify several important issues not resolved by the statutory language of Subsection 508(d). Said meeting also confirmed that there were substantial disagreements among the representatives present with respect to those issues.

ISSUES

Based upon the National Mediation Board's analysis of Subsection 508(d), as well as the August 11, 1982 meeting regarding that Subsection, the following unresolved material issues have been identified:

1) What are the entities described as "parties" by Subsection 508(d) which will be bound by the arbitration thereto? Absent a showing to the contrary, the Board will determine that the entities listed as "parties" on the attached distribution list are the "parties" specified by the Subsection and bound by the arbitration proceedings.

2) In view of the limited funds appropriated to the Board for interest arbitration, including arbitration pursuant to Subsection 508(d), are the parties willing to provide private funding, and to what extent?

3) Is Amtrak Commuter and the commuter authorities willing to utilize the transition funding authorized by Section 1139 of the Omnibus Budget Reconciliation Act to supplement the NMB's compensation of the referees herein, and to what extent?

4) (a) Where there is objection, does the Board have the authority to structure the arbitration under Subsection 508(d) as consolidated proceedings jointly affecting Amtrak Commuter and the commuter authorities?

(b) Does Amtrak Commuter or any of the commuter authorities formally object to such consolidated arbitration under Subsection 508(d)?

5) (a) Where there is objection, does the Board have the authority to structure the arbitration under Subsection 508(d) as consolidated proceedings jointly affecting more than one labor organization?

(b) Do any of the affected labor organizations formally object to such consolidated arbitration under Subsection 508(d)?

6) What is the most appropriate structure in which to conduct the arbitration required by Subsection 508(d)?

ORDER

Formal position statements on behalf of all interested parties with respect to the six (6) issues identified above shall be filed so as to be received at the Board's offices in Washington, D.C. on or before August 23, 1982. It is not necessary to serve such statements on the other parties to this proceeding.

Failure to file position statements herein will be deemed to constitute a waiver of that entity's opportunity to further address the issues stated in this document.

Failure by any of the "parties" identified in the attached distribution sheet to contest their designation as a party shall constitute an acknowledgement of their legal status as a party for all purposes associated with the arbitration proceedings pursuant to Subsection 508 (d) of the Rail Passenger Service Act, as amended.

By Order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.

Rowland K. Quinn, Jr.
Executive Secretary

- Distribution Sheet Attached -

RKQ/rec

DISTRIBUTION LIST

Parties:

- Amtrak Commuter (d/b/a Northeast Commuter Services Corp.)

  Mr. David W. Marston
  President
  1234 Market Street
  Philadelphia, PA 19107

  Jeffrey L. Braff, Esq.
  Wolf, Block, Schorr & Solis-Cohen
  Packard Building
  Philadelphia, PA 19103

  Alan J. Davis, Esq.
  Wolf, Block, Schorr & Solis-Cohen
  Packard Building
  Philadelphia, PA 19103

- Consolidated Rail Corporation

  Mr. Robert E. Swert
  Vice President - Labor Relations
  Six Penn Center
  Philadelphia, PA 19104

  Mr. Joseph H. Palmer
  Asst. V.P. - Labor Relations
  Six Penn Center, Room 1234
  Philadelphia, PA 19104

  Dennis Arouca, Esq.
  Labor Counsel
  1138 Six Penn Center Plaza
  Philadelphia PA 19104

- Delaware Department of Transportation

  Mr. Kermit H. Justice
  Secretary
  P.O. Box 778
  Dover, Delaware 11901

- Maryland Department of Transportation

  Mr. Lowell K. Bridwell
  Secretary
  P.O. Box 8755
  Baltimore Washington
  International Airport,
  Maryland 21240

- Metropolitan Transportation Authority - Metro North Commuter Rail Division

  Mr. Richard Ravitch
  Chairman, MTA
  347 Madison Avenue
  New York, NY 10017

  James D. Liss, Esq.
  Davis, Polk & Wardwell
  1 Chase Manhattan Plaza
  New York, NY 10005

  Ms. Genny Firnhaber
  347 Madison Avenue
  New York, NY 10017

- New Jersey Transit Rail Operations, Inc.

  Mr. Martin E. Robins
  Deputy Executive Director
  McCarter Highway & Market Street
  P.O. Box 10009
  Newark, NJ 07101

  T. Page Sharp, Esq.
  3939 North 49th Street
  McLean, VA 22101

  Julian Desposito, Esq.
  Isham, Lincoln & Beale
  3 First National Plaza
  Room 5200
  Chicago, IL 60602

- **Southeastern Pennsylvania Department of Transportation**

  Mr. David L. Gunn
  General Manager
  200 West Wyoming Avenue
  Philadelphia, PA 19140

- **American Train Dispatchers Association**

  Mr. D. E. Collins
  President
  1401 S. Harlem Avenue
  Berwyn, IL 60402

  Mr. Robert E. Johnson
  Vice President
  1100 Haral Place
  Cherry Hill, NJ 08034

- **ARASA Division - Brotherhood of Railway and Airline Clerks**

  Mr. Frank Ferlin, Jr.
  President
  3 Research Place
  Rockville, Maryland 20850

  Mr. Edmund J. Zaldaris
  General Chairman
  237 Fairview Drive
  Kutztown, PA 19530

  Mr. E. C. Snyder
  General Chairman
  362 Kinderkomack Road
  Westwood, NJ 07675

- **Brotherhood of Locomotive Engineers**

  Mr. J. F. Sytsma
  President
  1112 B of LE Building
  1365 Ontario Street
  Cleveland, OH 44114

  Mr. Joseph Carberry
  Vice President
  819 Railway Labor Building
  400 1st Street, N.W.
  Washington, D.C. 20001

Mr. Edward L. McCulloch
Vice President & National
Legislative Representative
819 Railway Labor Building
400 1st Street, N.W.
Washington, D.C. 20001

- Brotherhood of Maintenance of Way Employees

Mr. O. M. Berge
President
12050 Woodward Avenue
Detroit, Michigan 48203

Mr. William E. LaRue
Vice President
Downingtown Savings & Loan Bldg.
100 E. Lancaster Avenue
Downingtown, PA 19335

- Brotherhood of Railway and Airline Clerks

Mr. R. I. Kilroy
International President
3 Research Place
Rockville, MD 20850

Mr. Al Archval
General Chairman
1522 Locust Street
Philadelphia, PA 19102

Mr. R. A. Scardelletti
Executive Vice General Chairman
1522 Locust Street
Philadelphia, PA 19102

- Brotherhood Railway Carmen of the U.S. & Canada

Mr. O. W. Jacobson
President
4929 Main Street
Kansas City, MO 64112

Mr. Robert L. Shoemaker
231 N. 2nd Street
Leighton, PA 18235

- Brotherhood of Railroad Signalmen

Mr. R. T. Bates
President
P.O. Box U
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Mr. John E. Hansen
400 First Street, N.W, Suite 708
Washington, D.C. 20001

Mr. B. E. Britcher
General Chairman
#3 Building - Suite 232
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Harrisburgh, PA 17102

- International Association of Machinists & Aerospace Workers

Mr. W. W. Winpisinger
International President
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036

Mr. George DeHague
Railroad Coordinator
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036

- International Brotherhood of Electrical Workers

Mr. C. H. Pillard
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10400 W. Higgins Road
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Mr. Harvey L. Lindenmuth
General Chairman
425 Creek Road
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Mr. Peter A. Puglia
General Chairman
1015 Chestnut Street
Philadelphia, PA 19107

- International Brotherhood of Firemen & Oilers

Mr. George Francisco
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Mr. G. J. Francisco, Jr.
General Chairman
595 Ellicott Square Building
Buffalo, NY 14203

Mr. R. A. Sabol
Vice General Chairman
595 Ellicott Square Building
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- International Brotherhood of Teamsters

Mr. Norman Greene
Director, Airline Division
1400 Renaissance Drive
Park Ridge, IL 60068

Mr. William D. Summerville
Business Representative
15 East 26th Street, Suite 1508
New York, NY 10010

- Railroad Yardmasters of American

Mr. A. T. Otto, Jr.
President
1411 Peterson Avenue
Park Ridge, IL 60068

Mr. Joseph C. Thomas
1069 Mississippi Avenue
Pittsburgh, PA 15216

- Sheet Metal Workers International Association

Mr. Richard E. Martin
Vice President
1750 New York Avenue, N.W.
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Mr. Richard L. King
International Representative
5111 South 8th Rd., #208
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Mr. E. J. Fusco
General Chairman
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Mr. T. F. Nolan
General Chairman
385 Yorktown Road
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- Transport Workers Union of America

Mr. Albert A. Terriego
Vice President & Director Railroad
Division
1980 Broadway
New York, NY 10023

Mr. Frank A. DiPaolantonio
Local 2013
3126 Market Street
Philadelphia, PA 19104

- United Transportation Union

Mr. Fred A. Hardin
President
14600 Detroit Avenue
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Mr. Larry Wotaszak
Vice President
320 S. Main Street
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Plymouth, MI 48170

Non-Parties:

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Clinton M. Miller, III, Esq.
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U.S. Department of Transportation
Washington, D.C. 20590

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 139

In the matter of the
REPRESENTATION OF EMPLOYEES
of
IOWA RAILROAD COMPANY
Trainmen

CASE NO. R-5320
DISMISSAL-WITHDRAWN DURING INVESTIGATION
August 13, 1982

The services of the National Mediation Board were invoked by the Railroad Yardmasters of America, on July 9, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Trainmen", employees of the Iowa Railroad Company.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

Subsequently, Mr. A. T. Otto, Jr., President, Railroad Yardmasters of America, filed a letter with the National Mediation Board dated August 9, 1982, withdrawing the application of that organization for the services of the Board in this matter.

On the basis of the letter of withdrawal referred to above, the National Mediation Board hereby dismisses the application and closes its file in Case No. R-5320 subject to part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 140

In the matter of the	CASE NO. R-5312
REPRESENTATION OF EMPLOYEES	CERTIFICATION
of	August 30, 1982
COLUMBUS & GREENVILLE RAILWAY COMPANY	
Maintenance of Way Employees	

The services of the National Mediation Board were invoked by the Brotherhood of Maintenance of Way Employes (BMWE), on June 3, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Maintenance of Way Employees", employees of the Columbus & Greenville Railway Company.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative Charles A. Peacock to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Maintenance of Way Employees, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative John B. Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	BMWE	Number of Employees Eligible
Maintenance of Way Employees	12	19

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Brotherhood of Maintenance of Way Employes has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Maintenance of Way Employees, employees of the Columbus and Greenville Railway Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 141

In the matter of the : CASE NO. R-5319
REPRESENTATION OF EMPLOYEES : CERTIFICATION
of : August 31, 1982
MISSISSIPPI VALLEY AIRLINES :
Pilots and Co-Pilots :

The services of the National Mediation Board were invoked by the Air Line Pilots Association (ALPA), on July 6, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Pilots and Co-Pilots", employees of the Mississippi Valley Airlines.

At the time this application was received, these employees were represented by the International Association of Machinists and Aerospace Workers, AFLCIO (IAM&AW). On July 9, 1982, the IAM&AW disclaimed interest in the dispute.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Pilots and Co-Pilots, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	ALPA	Void Ballots	Any Other Org. or Individual	Number of Employees Eligible
Pilots & Co-Pilots	69	1	4*	85

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Air Line Pilots Association, International, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Pilots and Co-Pilots, employees of the Mississippi Valley Airlines, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

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*4 write-in votes for the MVA Pilots Association

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 142

In the matter of the
Application of the

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

alleging a representation
dispute pursuant to Section 2,
Ninth, of the Railway Labor
Act, involving employees of

AEROMECH AIRLINES

CASE NO. R-5308

FINDINGS UPON
INVESTIGATION;
DETERMINATION OF
ELIGIBILITY

September 2, 1982

On April 26, 1982, the International Brotherhood of Teamsters (IBT) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of representation disputes involving 1) Fleet Service Employees and 2) Passenger Service Employees of Aeromech Airlines. The application for Fleet Service was docketed as R-5308, and the one for Passenger Service as R-5309.

On June 29, 1982, the Board dismissed R-5309 based upon the investigation conducted by Board Representative John B. Willits. The Board found that a single craft or class of Fleet and Passenger Service Employees exists on Aeromech and the investigation continued pursuant to that finding. 9 NMB No. 129 (1982).

During the Board's investigation issues arose concerning eligibility of certain employees. Additionally, issues arose concerning alleged election interference.

As a result of these questions, the ballots were impounded and the ballot count which was originally scheduled to take place on August 2, 1982, was postponed pending determination of these issues.

ISSUES

The issues in this case are 1) whether certain employees are eligible to vote in this election and 2) whether there was interference in the election process on the part of agents acting on behalf of either the carrier or the union.

FINDINGS OF LAW

Determination of the issues is governed by Section 201, Title II, and Section II, Title I, of the Railway Labor Act, as amended, 45 U.S.C. §§181, 182.

I.

Section 201 of the Act extends all of the provisions of Title I of the Act, except the provisions of Section 3, thereof, 45 U.S.C. §153, to "every common carrier engaged in interstate or foreign commerce... and every air pilot or other person who performs any work as an employee or subordinate official of such carrier subject to its or their continuing authority to supervise and direct the manner or rendition of his service."

II.

Aeromech Airlines is a common carrier by air as defined in Title II, Section 201, of the Act, 45 U.S.C. §181.

III.

Section 2, Fourth, of the Act, 45 U.S.C. §152, Fourth, gives employees subject to its provisions "...the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representatives of the craft or class for the purposes of this Act."

IV.

Section 2, Ninth, of the Act, 45 U.S.C. §152, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this Section, the Board is required to designate who may participate as eligible voters in the event an election is required.

V.

The IBT is a labor organization and representative as defined in Section 1, Sixth, 45 U.S.C. §152, Sixth, and Section 2, Ninth, of the Act.

FINDINGS OF FACT

I.

In accordance with Board rules, the cut-off date for eligibility in this case was established as June 25, 1982.

II.

A.

The Carrier has appealed the eligibility rulings concerning Lana Joll and Gary Stealey. Ms. Joll was ruled eligible on the basis of the fact that as of the cut-off date she was working as a regular part-time employee in the craft or class. The Carrier argues that her change in status to casual employee on July 27, 1982, renders her ineligible.

Stealey's job duties consist of picking up freight to be delivered by Aeromech and transporting that freight to its point of debarkation. Aeromech argues that Stealey has separate supervision, separate hours of work, a separate rate of pay, and separate job duties.

B.

On September 1, 1982, the carrier informed the Board via telex that Stealey and another employee in the craft or class, Tony Tabor, had voluntarily resigned as of August 31, 1982.

Therefore, the carrier stated it was withdrawing its objections to Stealey's eligibility.

III.

The IBT has also appealed various eligibility determinations. The union claims that Gary Gillette is ineligible to vote by virtue of his status as "Acting Manager" at the Bluefield, West Virginia station. The carrier has submitted evidence that the only supervisory or managerial function performed by Gillette, in the absence of his manager, was the drafting of weekly work schedules. Even this function was subject to the approval of the Director of Stations.

IV.

At issue also is the eligibility of Todd Faller and Ken Karl, who were promoted to the position of shift supervisor in July, 1982. Shift supervisors are responsible for direct supervision and disciplining of employees and can authorize overtime. In addition, both Faller and Karl attend "Supervisors" meetings wherein they discuss operations and policy changes.

V.

The carrier asks that the ballot of Thomas Lipscomb not be counted. An affidavit submitted by Gary Gillette states that two employees had informed him that as Lipscomb was on vacation when the ballots were received, Lipscomb's wife had signed the outside of the ballot envelope. The IBT's response to this allegation was to disclaim any knowledge of this situation.

VI.

The IBT alleges that interference by Aeromech management has made the conduct of a free election impossible in this case. The union states that this interference was manifested in two ways. First, the union claims that election notices were not posted on time. Second, the union alleges that the employees had been urged to either vote for a company union or tear up their ballots. The carrier has submitted evidence denying both charges.

DISCUSSION

I.

The Board makes the following eligibility determinations.

A.

Gary Stealey is eligible to vote as his job responsibilities encompass traditional Fleet Service work. Although the carrier asserts that Mr. Stealey properly belongs to another craft or class, it fails to state which one. Mr. Stealey does in fact share an identifiable community of interest with Fleet and Passenger Service employees on Aeromech Airlines.

In addition Stealey and Tony Tabor are eligible to vote despite their resignations on August 31, 1982. Both were eligible to vote on August 2, 1982, the original date set for the count. As the Board stated in Altair Airlines, 7 NMB No. 254 (1980).

> "When the ballots in an election are impounded because of a question which requires resolution prior to the count, and the impounding results in a delay of the count beyond the count date... the status quo as it existed on the original count date must be preserved in order to prevent any change in the outcome as it would have been in the absence of the delay." [Emphasis in original].

B.

Gary Gillette is eligible because at no time did his job include managerial responsibilities.

Lana Joll is not eligible because at the time of the election she was classified as a "casual" employee per her request. She is paid on an hourly basis and receives none of the benefits received by the rest of the employees in the craft or class.

C.

Faller and Karl are ineligible because their new responsibilities place them outside the definition of "subordinate officials" within the meaning of the Railway Labor Act.

II.

A.

As the Board stated in Laker Airways, 8 NMB No. 79 (1981), where there is an allegation of interference, the test is whether the "laboratory conditions which the Board seeks to promote have been contaminated."

In this case there is insufficient evidence to warrant a finding of interference on the part of either the carrier or the union. Election notices were posted pursuant to NMB instructions. In addition, the carrier did not behave in such a manner as to create an atmosphere of "interference, influence, and coercion" such that the employees' freedom of choice was impaired.

B.

Since there was an allegation of forgery, if Lipscomb did submit a ballot, the attest portion will be compared with the employee's sample signature in the Board's file before the ballot return envelope is opened, in a manner which will insure the confidentiality of the ballot.

CONCLUSION

The list of eligible voters will be amended to conform to the determinations above. Furthermore, the Board is of the conclusion that there was no action on the part of either the carrier or the union of such an egregious nature as to justify a new election in this case. The impounded ballots will be opened and counted forthwith.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/mja

Copies to:

Robert Williams, Esq.
Mr. John Manchester
Mr. Norman Greene
Roland Wilder, Esq.
Mr. William Genoese
Mr. Vince Hickman
Mr. Angelo Koukoulis

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 143

In the matter of the	CASE NO. R-5213
REPRESENTATION OF EMPLOYEES	REVOCATION OF CERTIFICATION
of	September 3, 1982
TRANS-KENTUCKY TRANSPORTATION RAILROAD COMPANY	
Engineers	

On September 1, 1982, Mr. W. W. Winpisinger, International President, International Association of Machinists and Aerospace Workers, AFL-CIO, addressed a letter to Rowland K. Quinn, Jr., Executive Secretary, National Mediation Board herein quoted in part as follows:

> "Accordingly, it is our desire to surrender the Certification granted in Case No. R-5213 to the International Association of Machinists and Aerospace Workers, AFL-CIO, as the duly designated and authorized representative for the purposes of the Railway Labor Act, as amended, of the craft or class of Engineers, employees of the TransKentucky Transportation Railroad, Incorporated."

Board records confirm that the certification held by the IAM&AW for the craft or class of Engineers, employees of the Trans-Kentucky Transportation Railroad Company, was issued on August 28, 1981, in Board Case No. R-5213.

Under all the circumstances involved and on the basis of the above disclaimer, the National Mediation Board hereby revokes, effective September 3, 1982, the certification issued to the IAM&AW on August 28, 1981, Board Case No. R-5213. Employees in the craft or class of Engineers on the Trans-Kentucky Transportation Railroad Company shall be deemed to be unrepresented, and the time limits of Section 1206.4 of the Board's Rules shall not apply to any application for investigation of a representation dispute which may be filed hereafter.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 144

In the Matter of

ARBITRATION

Pursuant to Subsection 508(d)
of the Rail Passenger Service
Act, as Amended

September 7, 1982

DETERMINATION
AND ORDER

BACKGROUND

Section 1145 of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) amended Title V of the Rail Passenger Service Act (RPSA) by adding a new Section 508. Section 508 is entitled Transfer of Employees and is codified at 45 U.S.C. §588.

Subsection 508(d)(1) of the RPSA provides that unless agreements have been reached by August 1, 1982 for the matters subject to negotiation under Section 508 the parties to the negotiations shall select a neutral referee within an additional five days. Should the parties be unable to agree on the selection of the referee during that time, the National Mediation Board shall make such appointment(s).

With certain exceptions discussed further herein, the negotiations did not result in agreement under Section 508 of the RPSA. In only one instance did any of the parties agree on the selection of a referee during the statutory period.

Subsection 508(d)(3) of the RPSA provides that the National Mediation Board "shall fix and pay the compensation of such referees" appointed pursuant to Subsection 508(d)(1).

On August 11, 1982, the National Mediation Board conducted an informal meeting regarding various aspects of the arbitration provided for by Subsection 508(d). The Board's Chairman, Robert O. Harris, presided at that meeting. Representatives for many of the interested labor organizations and commuter authorities, as well as the Consolidated Rail Corp. (Conrail) and the Northeast Commuter Services Corp. (NCSC), attended that meeting and participated in the discussions.

The August 11, 1982 meeting served to identify several important issues not resolved by the statutory language of Subsection 508(d). Said meeting also confirmed that there were substantial disagreements among the representatives present with respect to those issues.

ISSUES

Based upon the National Mediation Board's analysis of Subsection 508(d), as well as the August 11, 1982 meeting regarding that Subsection, the following unresolved material issues were identified:

1) What are the entities described as "parties" by Subsection 508(d) which will be bound by the arbitration thereto?

2) In view of the limited funds appropriated to the Board for interest arbitration, including arbitration pursuant to Subsection 508(d), are the parties willing to provide private funding, and to what extent?

3) Is NCSC and the commuter authorities willing to utilize the transition funding authorized by Section 1139 of the Omnibus Budget Reconciliation Act to supplement the NMB's compensation of the referees herein, and to what extent?

4) (a) Where there is objection, does the Board have the authority to structure the arbitration under Subsection 508(d) in consolidated proceedings jointly affecting NCSC and the commuter authorities?

(b) Does NCSC or any of the commuter authorities formally object to such consolidated arbitration under Subsection 508(d)?

5) (a) Where there is objection, does the Board have the authority to structure the arbitration under Subsection 508(d) as consolidated proceedings jointly affecting more than one labor organization?

(b) Do any of the affected labor organizations formally object to such consolidated arbitration under Subsection 508(d)?

6) What is the most appropriate structure in which to conduct the arbitration required by Subsection 508(d)?

DISCUSSION

The Board issued a Notice and Order dated August 12, 1982 (9 NMB No. 138) requesting position statements on behalf of all interested parties with respect to the six issues identified above. Said Notice and Order was served on all the potentially affected labor organizations, Conrail, NCSC, the Delaware Department of Transportation (Delaware), the Maryland Department of Transportation (Maryland), the Metropolitan Transportation Authority - Metro North Commuter Rail Division (Metro-North), the New Jersey Transit Rail Operations, Inc. (NJTRO), and the Southeastern Pennsylvania Transportation Authority (SEPTA). Position statements have been filed on behalf of all the foregoing entities in response to the Board's August 12, 1982 Notice and Order.

In the interest of reasonable administrative efficiency and the timely appointment process contemplated by Subsection 508 (d), the NMB will not here reiterate all of the numerous arguments and supporting rationales presented by the respondants to the Board's August 12, 1982 Notice and Order. However, the Board fully has considered all of those responses and incorporates the position statements and attachments filed by the respondants in support of the NMB's administrative determinations herein.

In view of the NMB's neutral capacity and policy, the Board would prefer not to have been presented with these issues. However, that choice was for Congress to make, not this Agency.

Identity of Parties for Purposes of Section 508(d):

On page 474 of the Board's August 12, 1982 Notice and Order the Board stated:

> "Failure by any of the 'parties' identified in the attached distribution sheet to contest their designation as a party shall constitute an acknowledgement of their legal status as a party for all purposes associated with the arbitration proceedings pursuant to Subsection 508(d) of the Rail Passenger Service Act, as amended."

All the respondants to the Board's Notice and Order, with the exception of SEPTA, have acknowledged that they properly were designated as parties on the distribution sheet to said Notice and Order. SEPTA asserts that it is not properly a party to the Subsection 508(d) arbitration proceedings for a variety of reasons.

SEPTA notes that it has not "participated as a party" in the negotiations under Section 508 of the RPSA and that it did not participate in the Section 509 factfinding hearings. Apparently, SEPTA believes that such participation has not been required because it "intended to contract" with NCSC for the provision of commuter rail service currently provided by Conrail. Further SEPTA asserts that the litigation before the Special Court created by the Regional Rail Reorganization Act of 1973, as amended, (3R Act) has determined that SEPTA is not "a commuter authority that intends to operate commuter service".

SEPTA also alleges that Section 3, First (m) of the Railway Labor Act implies that it could not be bound as a party to the arbitration under Section 508 of the RPSA. Further SEPTA cites Subsection 508(e) of the RPSA in support of its position that it should not be a party under Subsection 508(d).

The labor organizations and Conrail contest SEPTA's assertion that it is not a proper party in the Subsection 508(d) proceedings. Specifically, the labor organizations assert that SEPTA has evidenced on numerous occasions the intent to perform various aspects of the "commuter service" currently provided by Conrail, either directly or by the use of independent contractors other than NCSC. The labor organizations note that SEPTA has not actually entered into a binding agreement with NCSC for the operation of commuter service and that NCSC has been unable to state exactly what, if any, aspects of the "commuter service" presently operated for SEPTA by Conrail it will operate as of January 1, 1983.

Further, the organizations contest SEPTA's assertion that the litigation before the Special Court established under the 3R Act determined that SEPTA was not subject to Subsection 508(d) of the RPSA. Rather, the organizations assert that a reasonable reading of the Special Court's decisions clearly indicates to the contrary. For that proposition the organizations initially cite the decision in RLEA v. SEPTA, 534 F. Supp. 832, 848 (Spec. Ct. 1982), cert. denied, ___ U.S. ___ (1982):

> "[I]n the end we are confident that the statute means what RLEA and Conrail say.... Congress left no real doubt that a commuter authority which was employing Conrail to render commuter service on the effective date of subtitle E [P.L. 97-35] could not operate that service on its own account or have Amtrak Commuter [NCSC] operate the service for it under adequate payment without propelling itself down the path described in §§508 and 510 [RPSA]."

The organizations also cited RLEA v. SEPTA, 534 F. Supp. 852, 856 (Spec. Ct. 1982), in support of their position that SEPTA properly is a party pursuant to Subsection 508(d) of the RPSA:

> "[A]s a general proposition, §508 (a)'s phrase 'commuter authorities that intend to operate commuter service' must be read to include commuter authorities that propose to transfer the operation of such service to a subcontractor.... Moreover, §508 (a)'s requirement regarding the direct operation of commuter service by a commuter authority would serve little purpose if it could be put at naught by use of an independent contractor."

The organizations cite numerous reasons which they assert clearly indicate that SEPTA plans to directly assume responsibilities for various aspects of the "commuter service" currently provided by Conrail and that SEPTA intends to contract out other aspects of that "commuter service". The organizations' position statement includes a documented enumeration of their asserted bases for that conclusion as follows:

(1) SEPTA intends to assume responsibility for commuter rail ticket sales effective September 1, 1982, through the use of an independant contractor other than NCSC.

(2) SEPTA intends to hire and train individuals to act as foremen and forewomen in the commuter rail car maintenance shops. These individuals will be SEPTA employees.

(3) SEPTA intends to contract out to a contractor other than NCSC, the maintenance and repair of electric commuter rail passenger cars.

(4) SEPTA is currently seeking federal funds to expand its existing subway and light rail vehicle repair shops to accommodate the maintenance and repair of commuter rail cars. When these alterations are complete, the maintenance and repair work will be done by SEPTA employees.

(5) SEPTA is currently seeking federal funds to expand its car tracing and vehicle management systems to accommodate commuter rail cars. When these additions are complete, the commuter car tracing will be performed by SEPTA employees.

(6) SEPTA is currently seeking federal funds to perform certain commuter rail roadway rehabilitation and rail renewals. This work is to be performed by an independent contractor other than NCSC.

(7) SEPTA is currently seeking federal funds to perform certain crossing reconstructions. This work is to be performed by an independent contractor other than NCSC.

(8) SEPTA is currently seeking federal funds to perform certain bridge rehabilitations. This work is to be performed by an independent contractor other than NCSC.

Conrail presently is the contract operator for SEPTA. The public agencies for which Conrail has performed commuter rail service under contract, including SEPTA, were given the opportunity to elect to perform that service directly as well as to contract with NCSC. Conrail has stated in its position statement filed in this matter that it understands that the "commuter authorities that intend to operate commuter service" within the meaning of Section 508 of the RPSA include SEPTA.

Conrail notes that SEPTA, Delaware and Maryland have arranged to contract with NCSC for the operation of yet to be identified aspects of commuter service previously provided to those agencies by Conrail. However, Conrail argues that the uncertainty of the allocation of service responsibilities among NCSC, SEPTA, Maryland and Delaware make it appropriate that all of those entities be joined as parties to the arbitration under Subsection 508(d) of the RPSA.

Further, Conrail notes that SEPTA and NCSC repeatedly have failed to respond to Conrail's request for a description of which aspects of commuter rail service in the metropolitan Philadelphia area NCSC will or will not perform on or after January 1, 1983. Conrail also contests SEPTA's assertion that the decisions of the Special Court support the conclusion that SEPTA should not be a party to the arbitration proceedings pursuant to Subsection 508(d) of the RPSA.

The Congressional mandate to the National Mediation Board to "appoint" the arbitrators pursuant to Subsection 508(d) of the RPSA necessarily embodies the corresponding obligation to indicate which parties shall be before those arbitrators, at least initially for purposes of commencing the arbitration. It is essential that all of the entities arguably affected by the transition process participate in the statutory arbitration scheme. Otherwise, it is quite feasible that the important arbitration opportunity afforded by Subsection 508(d) may be utilized by only a portion of the affected entities to apparently resolve the Conrail transition problems, when at a later date yet another party could arise raising unresolved issues with respect to the transition process. This disjointed practice would be contrary to the orderly scheme contemplated by Section 508 and would be greatly destructive to the statutory time-frame requiring consummation of the transition process by January 1, 1983, a tight deadline under any circumstances.

Inasmuch as SEPTA contests the NMB's authority to indicate who the "parties" are for purposes of Subsection 508(d), the NMB will further belabor this document by noting yet another practical factor obligating that action. Specifically, based on the NMB's long experience with the arbitration process, and the working arbitrators themselves, the Board believes that few, if any, qualified arbitrators would accept an appointment to a case where the parties to appear before the arbitrator were indeterminant. Accordingly, absent a determination of party status by some other competent authority, the NMB is obligated to make that decision itself, at least for purposes of initiating the arbitration process.

The Board carefully has considered all of the arguments of the contesting participants regarding this issue, as well as the full opinions of the Special Court established under the Regional Rail Reorganization Act of 1973, as amended. We find that the holdings of the Special Court do not, as asserted by SEPTA, reasonably lead to the conclusion that SEPTA is not properly a party to the Subsection 508(d) arbitration proceedings. Neither Section 3, First(m) of the Railway Labor Act nor Subsection 508(e) of the RPSA support SEPTA's position. The RLA section is inapplicable to this matter and Subsection 508(e) merely provides for dispute resolution in the event NCSC transfers commuter service back to SEPTA at a later date.

Further, the Board finds that there is at least the reasonable probability that SEPTA will operate, directly or indirectly, "commuter service" within the meaning of Section 508 other than that which will be contracted to NCSC. Among the numerous factors discussed above supporting this conclusion is the fact that SEPTA has declined to reasonably indicate which portion or portions of its current Conrail contract service will be undertaken by NCSC. Had SEPTA been willing to commit itself in an unambiguous fashion on that matter, the question of its party status may have been more easily resolved. However, that determination was SEPTA's choice to make and the NMB has to assume that it understood the potential ramifications.

Should SEPTA ultimately prevail in litigation before the Special Court, or otherwise, resolving the question of its party status under Section 508, any conflicting provisions of an arbitration award dealing with SEPTA would be void or voidable for lack of jurisdiction pursuant to Section 3, First (q) of the Railway

Labor Act, 45 U.S.C. §153, First (q). Section 3 of the RLA expressly is referenced by Subsection 508(d)(3) of the RPSA. Even should an award be issued which potentially bound SEPTA as a party to the proceeding, said award readily could be conditioned on a subsequent judicial determination that SEPTA was not subject to Section 508 of the RPSA.

Based upon all of the facts and circumstances of this matter, it is the Board's determination that SEPTA must be treated, at least at this initial stage, as a "party" subject to Subsection 508(d) of the RPSA and be bound by the results of the arbitration therein.

Fortunately, all the other entities initially identified by the Board as "parties" on the NMB's August 12, 1982 Notice and Order have concurred with the Board's identification of their party status. In addition, the Board has learned that the International Brotherhood of Boilermakers and Blacksmiths should be added to that list of parties for purposes of Subsection 508(d). Accordingly, the NMB finds that all of those entities listed on the distribution sheet to this Determination and Order properly are parties to the arbitration pursuant to Subsection 508(d) of the RPSA.

The Board recognizes the jurisdiction of the Special Court regarding this issue and hereby conditions this determination on any subsequent adjudication by the Special Court, or any other competent judicial authority. Accordingly, should said Court or Courts ultimately determine that SEPTA or any of the other entities identified as parties herein is not properly a party to Subsection 508(d), this Order shall be deemed modified to the extent of that future judicial decree.

Availability of Supplemental Funding:

In view of the very limited funding available to the National Mediation Board for the arbitration pursuant to Section 508 of the RPSA, the Board inquired with regard to what supplemental sources of funding might be available. Although some of the parties indicated that they would be willing to provide or seek supplemental funding, all of those responses indicated limitations and/or qualifications which substantially diminished the practical ability of the Board to consider utilizing those potential funding sources.

In addition, the NMB inquired whether or not NCSC and the commuter authorities would be willing to seek access to the transition funding under Section 1139 of the Omnibus Budget Reconciliation Act for purposes of the Section 508 arbitration proceedings. Although NCSC and one commuter authority indicated that they would be willing to seek access to the transition funds, such offers were substantially qualified.

In addition, the position statement filed on behalf of the U.S. Department of Transportation indicated that DOT's approval for the use of transition funding was in question. For example, DOT stated it was the Congressional intent that the payment of the arbitrators under Section 508 would come from the NMB and that the transition funds "were intended to cover other expenses". Further, DOT noted that none of the commuter authorities has budgeted their anticipated transition funding to include the Section 508 arbitration proceedings. Although DOT did not totally preclude its approval of utilizing transition funds for the Section 508 proceedings, it further indicated that any parties requesting such approval would be required to demonstrate why regular NMB funding, or private funding, would not be sufficient.

Under these circumstances, and in view of the statutory language of Subsection 508(d)(3), "the National Mediation Board shall fix and pay the compensation of such referees", the NMB cannot reasonably rely upon funding for the subject arbitration proceedings from sources beyond those currently appropriated to the Board. Although Congress provided no special appropriations to the NMB for purposes of the Subsection 508(d) arbitration proceedings, the Board is of the opinion that funds appropriated for interest arbitration pursuant to Section 7 of the Railway Labor Act, 45 U.S.C. §157, appropriately are available for the interest arbitration authorized by Subsection 508(d) of the RPSA.

The Anti-Deficiency Act, 31 U.S.C. §665, precludes federal agencies from obligating funds in excess of their appropriations. Accordingly, the number of arbitrators appointed under Subsection 508(d) will have to be commensurate with the limited appropriation available to the Board for interest arbitration. Further, the NMB is under distinct limitations imposed by the Office of Management and Budget and the General Services Administration, respectively, with respect to the daily salary amount and the compensation for expenses which may be paid to the arbitrators in connection with any arbitration proceedings, including those under Subsection 508(d).

NMB's Authority to Structure and Consolidate the Arbitration Proceedings:

Subsection 508(d) of the RPSA expressly directs the National Mediation Board to "appoint" the referees required under that Subsection. However, neither the statute nor its legislative history provide any guidance with respect to the number of referees to be appointed or the structure in which the arbitration proceedings should take place. However, the legislative scheme is clear that the entire transition process must be completed by January 1, 1983 when Conrail will terminate its contract operation of the commuter activities.

The implementing agreements which are the subject of the arbitration pursuant to Subsection 508(d) are an important aspect of the smooth transfer of those Conrail contract operations to the commuter authorities and/or NCSC. Accordingly, the expeditious processing of the arbitration proceedings under Section 508 must commence despite the potential impediments discussed herein.

Absent any other entity with the immediate authority to determine the appropriate structuring of the arbitration process, as well as the statutory scheme of Subsection 508(d) providing that the NMB shall "appoint" such arbitrators, the Board is obligated and empowered to perform that function itself as a necessary function incident to the appointment power. Congress' selection of the Board as the agency to appoint neutral referees under Subsection 508(d) is clear evidence of Congress' confidence in the Board's reasoned discretion with regard to the essential corollary of structuring the arbitration process.

The Board can and must consider its own funding constraints when evaluating the arbitration structure, including the question of establishing consolidated proceedings before a more limited number of neutrals than some of the parties might desire. Inasmuch as Subsection 508(d)(3) expressly provides for payment of the arbitrators by the Board, that section necessarily contemplates that the Board would consider its ability to pay when evaluating the number of arbitrators to appoint.

The question then becomes a matter of balancing the objectives of consummating the Section 508 arbitration proceedings within the statutory time-frame against the good faith views of several of the parties that the proceedings should not be conducted in a consolidated fashion. In view of the applicable funding constraints and the Board's obligation to make definitive appointment under Section 508, the choice is simply to appoint a limited number of arbitrators to conduct proceedings in a consolidated fashion or to delay the appointment of all or some of the arbitrators until funding may become available at some speculative date in the future.

In view of the doubtful prospect of obtaining additional funding for this function, as well as the expressed statutory directive that the Board appoint the specific arbitrators "immediately" after the specified time periods, which have now expired, the Board must conclude that it cannot wait with the anticipation of additional funding. The time to act on the appointments is now, and the Board must act with what resources it has available to it. Accordingly, partial consolidation of the arbitration proceedings is a practical necessity in order to comply with the statutory scheme of Subsection 508(d).

Structure for the Subsection 508(d) Arbitration Proceedings:

Consistent with the foregoing discussion of the agency's practical obligation to consolidate some of the arbitration proceedings, the final question is in what structure, or arrangement of parties, said proceedings must take place. The views on this issue expressed by the respondants varied greatly and were mutually incompatible.

The statutory scheme of the transition process contemplates that the individual commuter authorities, and/or NCSC, shall assume the current contract commuter functions of Conrail consistent with the authorities' respective needs, including the political environments in which they operate as agencies of state governments (except NCSC).

The reasonable argument has been made that the election of Metro-North, NJTRO, and NCSC to negotiate separately reflects the practical and substantial differences in the New York, New Jersey and Philadelphia regions. These include very distinct concerns with regard to funding, pre-existing labor agreements, ridership and numerous other matters. It is further asserted that the appointment of separate referees for each of the commuter authorities and NCSC would permit the arbitrator to tailor the implementing agreements to meet the specific and distinct concerns of both management and labor at those separate entities.

The Board believes the statutory intent requires that where individual commuter authorities and NCSC object to consolidated arbitration, they must be afforded the opportunity to individually proceed within the Section 508 arbitration process. Further, the diverse funding circumstances and operating conditions of NCSC and the commuter authorities fully support the conclusion that any objection to consolidated arbitration by those entities must be honored by the NMB. Metro-North, NJTRO and NCSC formally have objected to consolidated arbitration proceedings.

In view of the foregoing determination and the previously noted funding limitations imposed on the NMB, honoring requests for separate arbitration made by some of the labor organizatons is precluded as a practical matter. Accordingly, in view of those limitations, the Board considers the labor organizations general practice of utilizing joint bargaining in the Section 508 negotiations as establishing a reasonable pattern for purposes of the arbitration to resolve those negotiations. For example, the Board understands that the operating unions have participated in joint negotiations at the various properties in question as, with certain exceptions, have the non-operating unions.

In view of the applicable funding limitations, and the general patterns the parties have set for themselves, it appears necessary and reasonable to structure the arbitration proceedings at each of the properties on a consolidated basis. While there will be a consolidated proceeding, nothing stated herein is intended to limit the rights of each labor organization to present its views regarding the carrier's employment needs, as those needs pertain to its members. It is the responsibility of the arbitrator to determine an appropriate format and method to be used in each proceeding.

Metro-North is in the commendable position of having reached implementing agreements with all but the operating unions and the Brotherhood of Railroad Signalmen. Accordingly, the arbitration at that authority will be limited to those parties and Conrail.

ORDER

Based upon all of the facts and circumstances, and the Board's statutory responsibilities pursuant to Subsection 508(d) of the Rail Passenger Service Act, as amended, it hereby is ORDERED:

1) The "parties" to the arbitration pursuant to Subsection 508(d) of the RPSA are those entities listed on the service sheet to this Determination and Order. Should the Special Court, or any other competent judicial authority, ultimately determine that SEPTA or any other entity is not properly a party pursuant to Subsection 508(d), this Order shall be deemed modified to the extent of that future judicial decree.

2) The compensation of the neutral referees appointed pursuant to Subsection 508(d) shall be paid from the appropriation of the National Mediation Board. The referees' salaries and expenses shall be based on the availability of the appropriations and the applicable limitations imposed by the Office of Management and Budget and the General Services Administration. Arbitrators will be limited to a maximum of twenty (20) days compensation, including travel, hearing, study and preparation time.

3) The arbitration proceedings pursuant to Subsection 508(d) will be structured with the following groupings as parties:

(1) NCSC, Conrail, operating unions, and non-operating unions.

(2) Metro-North, Conrail, operating unions and BRS.

(3) NJTRO, Conrail, operating unions, non-shop non-operating unions, and shop craft unions.

(4) SEPTA, Conrail, operating unions, and non-operating unions.

(5) Delaware, Maryland, Conrail, operating unions, and non-operating unions.

The Board determines that its designation of 5 separate arbitration proceedings as described above is appropriate in view of practical considerations, including funding limitations and availability of arbitrators. Arbitrators selected by the Board are responsible for structuring the proceedings to allow each party adequate time to present its arguments, although according to Section 508 of the Act a decision is required twenty (20) working days after the commencement of hearings. Matters before the arbitrator are strictly limited under Subsection 508(c) and it is not intended that the arbitrator will have the time to consider peripheral matters. Any motion to reconsider this ORDER, and the support therefore, must be received at the Board's offices by 10:00 A.M., E.S.T., on September 10, 1982.

By ORDER of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

- Service Sheet Attached -

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NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 145

In the matter of the : CASE NO. R-5308
REPRESENTATION OF EMPLOYEES : DISMISSAL
of : September 7, 1982
AEROMECH AIRLINES
Fleet & Passenger Service Employees

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters (IBT), on April 26, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Fleet and Passenger Service Employees", employees of Aeromech Airlines.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Fleet and Passenger Service Employees, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IBT	Number of Employees Eligible
Fleet & Passenger Service Employees	15	50

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 146
September 7, 1982

Michael S. Wolly, Esq.
Mulholland & Hickey
1125 15th Street, N.W.
Suite 400
Washington, DC 20005

Re: NMB Case No. R-5318

Dear Mr. Wolly:

This will acknowledge receipt of your protests of August 11, 1982, (2 letters), August 12, 1982, and September 1, 1982, filed on behalf of the Railroad Yardmasters of America (RYA), regarding the application of the Yardmasters Steering Committee (YSC) to represent Yardmasters on the Union Pacific Railroad. These protests fall into two categories: those related to compliance with the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), and those related to the intent and ability of YSC to represent the employees if certified, including contentions regarding campaign materials circulated by YSC.

With respect to the LMRDA filing requirement encompassed in Section 1.0 of the Representation Manual, YSC has provided a copy of the Department of Labor receipt, including its File Number 514-727, and a copy of its Form LM-1, constitution, and by-laws. The Board notes that the YSC application was held in abeyance for a month while YSC met these requirements. Therefore, the Board finds no basis for granting the RYA's request to dismiss the YSC's application on this ground.

With respect to allegations concerning the intention of YSC to represent the craft or class if certified, the Board finds insufficient evidence to warrant further investigation or a hearing. Review of the YSC campaign literature submitted does not reveal a lack of intent to represent the employees.

Additionally, the materials do not fall outside of the scope of permissible campaign propaganda so as to justify remedial action, and no tangible evidence of unlawful carrier support or interference has been presented.

For the reasons cited above, the RYA protests are denied. Ballots in this case will be counted as scheduled.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr
Executive Secretary

cc: Mr. A. T. Otto
Mr. Donald D. Cole
Mr. P. A. Jordan
Mr. J. J. Marchant

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 147

In the matter of the Application of
AIR FLORIDA PILOTS ASSOCIATION
alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act, involving
employees of
AIR FLORIDA, INC.

CASE NO. R-5326

FINDINGS UPON INVESTIGATION

September 10, 1982

On August 2, 1982, the Air Florida Pilots Association (AFPA) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth, alleging the existence of a representation dispute involving Flight Deck Crew Members, employees of Air Florida. Said application has been docketed as NMB Case No. R-5326.

At the time the application was received, these employees were represented by AFPA pursuant to a voluntary recognition agreement.

The Board assigned Board representative Charles H. Callahan to investigate. During the course of the investigation, it was determined that the application was supported by petitions from the employees, rather than by individually signed authorization cards.

DISCUSSION

Section 1203.2 of the Board's Rules, 29 CFR Part 1203, provides in pertinent part:

§1203.2 Investigation of representation disputes.

> Applications for the services of the National Mediation Board under section 2, Ninth, of the Railway Labor Act to investigate representation disputes among carriers' employees may be made on printed forms NMB-3, copies of which may be secured from the Board's Executive Secretary. Such applications and all correspondence connected therewith should be filed in duplicate and the applications should be accompanied by signed authorization cards from the employees composing the craft or class involved in the dispute. ... [Emphasis supplied].

Section 1206.3 of the Board's Rules, additionally, is entitled "Age of authorization cards."

The Board finds that employee petitions, as opposed to individual authorization cards, do not insure that employees have the freedom of choice required by the Railway Labor Act. By its very nature, collection of signatures on petitions exerts an undue influence over employees, and interferes with their ability to select a representative.

For this reason, the Board will not accept employee authorizations in the form of petitions in any future representation case pursuant to Section 2, Ninth, of the Act, and the Board's Rules. Employee authorizations must be individually signed and dated documents, whether on cards or letter-size sheets of paper. Applications accompanied by petitions will be returned to the applicant without docketing.

ORDER

The Board finds a dispute to exist in Case No. R-5326 among Flight Deck Crew Members, employees of Air Florida. An all-mail ballot election is hereby authorized using a cut-off date of August 6, 1982. Applicant AFPA will appear on the ballot, and the count will be in Washington, D.C.*/

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

CC: Mr. Don B. Hays
Daniel M. Katz, Esq.
Mr. Arnold D. Pilkington
Mr. Lyle M. Speace

---

*/ Because the rule requiring individual authorization cards has not been strictly enforced in the past, the Board will not dismiss the instant application. However, because the instant application was accompanied by petitions, the Board finds that a representation election is the most suitable means for determining whether the employees wish to be represented. The request for a certification based upon a check of auhorizations is therefore denied.

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 148

In the Matter of :
:
ARBITRATION : DETERMINATION ON
: MOTIONS FOR
Pursuant to Subsection 508(d) : RECONSIDERATION
of the Rail Passenger Service :
Act, as Amended : September 13, 1982

On September 7, 1982, the National Mediation Board issued a Determination and Order, 9 NMB No. 144, to resolve several matters pertaining to the arbitration proceedings to be conducted pursuant to Subsection 508 (d) of the Rail Passenger Service Act (RPSA), as amended, 45 U.S.C. §588. Motions to reconsider the Board's decision were received from the Delaware Department of Transportation (Delaware), the Southeastern Pennsylvania Transportation Authority (SEPTA), and the Northeast Commuter Services Corp., (NCSC). A combined motion for reconsideration from the labor organizations representing the affected operating and non-operating employees was also received.

DISCUSSION

I.

Contrary to its earlier position, Delaware requested that it be removed as a party to the arbitration proceedings to be conducted pursuant to Section 508 of the RPSA. Delaware advised that it had no intention of establishing itself as an operator of commuter service, or of assuming service responsibilities, and would be contracting with either NCSC, SEPTA, or AMTRAK, for complete service. Delaware further recommended that, while not party to the arbitration proceedings, it should be designated as subject to the arbitration results applicable to the eventual service provider.

SEPTA reiterated its previous contention that it is not a party to the Subsection 508(d) arbitration proceedings and that the Board had no authority to make such a determination. SEPTA recommended that if the Board refuses to designate SEPTA as a non-party, then the appropriate course would be to order a consolidated arbitration proceeding for NCSC and SEPTA. SEPTA argued that separate arbitration proceedings for NCSC and SEPTA would be costly, confusing and counterproductive. NCSC joined with this recommendation for a consolidated proceeding in its motion for reconsideration to the Board.

The labor organizations' response requested that the Board: (1) Join SEPTA, NCSC, Delaware and Maryland in three arbitration proceedings with (a) the employees with whom NCSC has reached agreement on certain issues, (b) the non-operating employees with whom NCSC has reached no agreement, and (c) the operating employees; (2) Establish two arbitration panels on the Metropolitan Transportation Authority - Metro North Commuter Rail Division, one for the operating employees and one for the Brotherhood of Railroad Signalmen; and, (3) Establish three arbitration panels on the New Jersey Transit Rail Operations, Inc., one for the operating unions, one for the shop craft unions, and one for the non-shop non-operating unions. The Board should, they argue, seek funds from the Department of Transportation to compensate the additional arbitrators that would be required.

II.

The Board has fully considered all the matters raised in the foregoing motions, but has determined not to amend its Determination and Order of September 7, 1982. The Board finds that Delaware and SEPTA have been properly designated as parties to the Subsection 508 (d) arbitration proceedings. Under the Northeast Rail Passenger Service Act, a commuter authority has the option of either operating the ConRail contract service itself after January 1, 1983, or entering into an agreement with NCSC to provide such service. As of the present time, neither SEPTA nor Delaware have entered into such an agreement with NCSC. In view of the absence of such an agreement at this late date, the Board believes that there is a reasonable probability that SEPTA and Delaware intend to operate, directly or indirectly, the commuter service presently provided by ConRail, and are therefore subject to the Section 508 arbitration proceeding. If SEPTA or Delaware had formally contracted with NCSC for the ConRail contract service, the question of party status might have been more easily resolved. Delaware and SEPTA must accept the responsibility for this situation.

The Board finds that, using the same rationale as above, it must stand by its initial decision to proceed with separate arbitrations at SEPTA and NCSC. Because of the lack of certainty as to the ultimate relationship between SEPTA and NCSC, if any, and the possibility that NCSC will provide commuter service to Delaware and the Maryland Department of Transportation, in addition to SEPTA, a consolidated proceeding for SEPTA and NCSC alone would not be appropriate. In its position statement to the Board of August 20, 1982, NCSC objected to a consolidated proceeding:

> "NCSC formally objects to consolidated arbitration proceedings jointly affecting NCSC and the commuter authorities.
>
> "Section 508 of the Act precludes consolidated proceedings affecting NCSC and the commuter authorities. By separately dealing in subsections (a) and (b) with NCSC and the commuter authorities that intend to operate commuter service, Section 508 clearly contemplates separate negotiations and separate agreements for each of the commuter regions. Under subsection (d)(1), it is the parties to each such negotiation who are entitled to the selection or appointment of a neutral referee. Similarly, under subsection (d)(2), the referee is to determine the issues in dispute between the particular parties as a result of their own specific negotiations. Thus, as an independent party to a separate negotiation, NCSC is entitled to an independent and separate arbitration under the express terms of Section 508."

The Board found that argument pursuasive then, and does now.

The request for separate arbitration proceedings made on behalf of the labor organizations must also be denied. As was addressed in the Determination and Order, the Board made an extraordinary effort to secure the necessary funding which might have permitted separate arbitration proceedings for the operating and non-operating unions. That the Board was unsuccessful in this effort was also discussed in the forementioned decision. In addition, Subsection 508 (d)(3) of the RPSA states that "the National Mediation Board shall fix and pay the compensation" of the referees appointed to conduct the arbitration proceedings under Section 508. In view of this statutory language and the limited funds at the Board's disposal to conduct such proceedings, separate arbitration proceedings are not fiscally possible.

CONCLUSION

The Board concludes that there is no basis for amending its Determination and Order of September 7, 1982. Referees will be appointed forthwith to commence the five arbitration proceedings described on page 510 of the September 7, 1982, decision.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretar

- Service Sheet Attached -

SERVICE SHEET

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NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 149

In the matter of the : CASE NO. R-5318
REPRESENTATION OF EMPLOYEES : CERTIFICATION
of : September 14, 1982
UNION PACIFIC RAILROAD COMPANY :
Yardmasters :

The services of the National Mediation Board were invoked by the Yardmasters Steering Committee, (YSC) on June 10, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Yardmasters", employees of the Union Pacific Railroad Company.

At the time this application was received, these employees were represented by the Railroad Yardmasters of America (RYA).

The Board assigned Board Representative Joseph E. Anderson to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Yardmasters, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative John B. Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	YSC	RYA	Number of Employees Eligible
Yardmasters	138	42	223

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Yardmasters Steering Committee, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Yardmasters, employees of the Union Pacific Railroad Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 150

In the matter of the : CASE NO. R-5321
REPRESENTATION OF EMPLOYEES : DISMISSAL
of : September 14, 1982
OLYMPIC AIRLINES :
Passenger Service Employees :

The services of the National Mediation Board were invoked by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW), on July 19, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Passenger Service Employees", employees of Olympic Airlines.

At the time this application was received by the Board, these employees were not represented by any organization or individual.

The Board assigned Board Representative Thomas C. Kinsella to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Passenger Service Employees, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative David M. Cohen, who was assigned to count the balloting in this case.

Number of Employees Voting:

	IAM&AW	Number of Employees Eligible
Passenger Service Employees	14	41

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

On the basis of the investigation and report of election which establishes that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed subject to Part 1206.4 of the NMB Rules.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 151

In the matter of the	CASE NO. R-5325
REPRESENTATION OF EMPLOYEES	CERTIFICATION
of	September 16, 1982
AIR CALIFORNIA	
Flight Deck Crew Members	

The services of the National Mediation Board were invoked by the Air Line Pilots Association (ALPA), on July 30, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Flight Deck Crew Members", employees of Air California.

At the time this application was received, these employees were represented by the International Brotherhood of Teamsters (IBT).

The Board assigned Board Representative Charles R. Barnes to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Flight Deck Crew Members and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Barnes, who was assigned to count the ballots in this case.

Number of Employees Voting:

	ALPA	IBT	Number of Employees Eligible
Flight Deck Crew Members	217	27	256

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Air Line Pilots Association, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Flight Deck Crew Members, employees of Air California, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwa

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 152

In the matter of the	CASE NO. R-5323
REPRESENTATION OF EMPLOYEES	CERTIFICATION
of	September 20, 1982
BIG SKY TRANSPORTATION CO. d/b/a BIG SKY AIRLINES	
Pilots & Co-Pilots	

The services of the National Mediation Board were invoked by the Big Sky Pilot Association (BSPA), on July 13, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Pilots & Co-Pilots", employees of Big Sky Transportation Co. d/b/a Big Sky Airlines.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Pilots and Co-Pilots, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	BSPA	Void Ballots	Number of Employees Eligible
Pilots & Co-Pilots	27	1	39

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Big Sky Pilot Association, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Pilots and Co-Pilots, employees of Big Sky Transportation Co. d/b/a Big Sky Airlines, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 153

In the matter of the : CASE NO. R-5310
REPRESENTATION OF EMPLOYEES : CERTIFICATION
of : September 23, 1982
COMBS AIRWAYS, INC. d/b/a
COMBS FREIGHTAIR
Pilots and Co-Pilots

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters (IBT), on May 17, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Pilots & Co-Pilots", employees of Combs Airways, Inc. d/b/a Combs Freightair.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative John B. Willits to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Pilots & Co-Pilots, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Willits, who was assigned to count the ballots in this case.

Number of Employees Voting:

	IBT	Any Other Org. or Individual	Number of Employees Eligible
Pilots & Co-Pilots	2	38*	45

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Combs Airline Pilots Association, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Pilots & Co-Pilots, employees of Combs Airways, Inc. d/b/a Combs Freightair, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/dca

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*/ 38 write-in votes for the Combs Airline Pilots Association.

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 154
September 23, 1982

Michael H. Campbell, Esq.
Ford, Harrison, Sullivan, Lowry & Sykes
1400 Harris Tower
233 Peachtree Street, N.E.
Atlanta, GA 30303

Re: NMB Case No. R-5322, Scheduled Skyways/ALPA

Dear Mr. Campbell:

This will acknowledge receipt of the appeal of Scheduled Skyways from the ruling of Board Representative Laurette Piculin that Mark E. Ingram is an eligible voter under Section 1206.6 of the Board's Rules, 29 CFR Part 1206, and Section 5.304 of the Representation Manual, on account of his pending suit for reinstatement.

The appeal states that Ingram was terminated on July 22, 1982, and that no grievance or law suit seeking reinstatement was pending as of September 9, 1982 (the date of the appeal). The Air Line Pilots Association has subsequently provided the Board with a copy of the complaint in ALPA v. Scheduled Skyways, Civil Action No. 82-2199, filed in the United States District Court for the Western District of Arkansas. The Clerk's date stamp indicates that the suit was filed on September 2, 1982.

On the basis of the information received, the Board finds that Mark E. Ingram has a pending suit for reinstatement in a court of competent jurisdiction within the meaning of the Board's Rules. The Board Representative's ruling is sustained.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. J.J. O'Donnell
Ms. Laurette Piculin

RKQ/dca

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 155

In the matter of : CASE NO. R-5336
the Application of the : (FILE NO. CR-5167)

BROTHERHOOD OF LOCOMOTIVE ENGINEERS : FINDINGS UPON INVESTIGATION

alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act : September 23, 1982

involving employees of the

LONG ISLAND RAIL ROAD

On September 13, 1980, the Brotherhood of Locomotive Engineers (BLE) filed an application pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, 45 U.S.C. §152, Ninth alleging the existence of a representation dispute involving certain employees of the Long Island Rail Road (LIRR). The specific purport of the BLE application was the accretion of "Assistant Road Foremen" and "Engineer Training Specialists" to the craft or class of Locomotive Engineers. This case was assigned NMB File No. CR-5167.

The Board assigned Board Representative Mary L. Johnson to investigate this case.

During the course of the investigation, issues arose concerning the appropriate craft or class within which both groups of employees should be placed. Position statements with accompanying evidence were received from both the LIRR and the BLE.

ISSUE

The issue presented is whether "Assistant Road Foremen of Engines" and "Engineer Training Specialists" should be accreted to the craft or class of Locomotive Engineers.

CONTENTIONS

BLE asserts that both the Assistant Road Foremen of Engines and the Engineer Training Specialists share a community of interest with the Locomotive Engineers. They argue that personnel in these positions are promoted from the craft or class of Engineers, continue to accumulate seniority rights, and are represented in certain matters by the BLE.

The LIRR maintains that Assistant Road Foremen of Engines should be excluded from the craft or class of Locomotive Engineers. Although the LIRR does not claim that these employees are "management officials" under the Railway Labor Act, the Carrier argues that these employees are supervisors who share no work-related community of interest with the craft or class of Engineers. In addition, the LIRR asserts that the title "Engineer Training Specialists" is a misnomer. In reality, there is a job classification of Training Specialist, comprised of employees promoted from various crafts or classes on the LIRR.

FINDINGS OF LAW

Determination of the issues in this case is governed by Sections 1 and 2 of the Railway Labor Act, 45 U.S.C. §151, 152.

I.

The LIRR is a carrier as defined in Section 1, First, of the Act.

II.

BLE is a labor organization and representative as defined in Section 1, Sixth, and Section 2, Ninth of the Act.

III.

Section 1, Fifth, of the Railway Labor Act states:

> The term "employee" as used herein includes every person in the service of a carrier... who performs any work defined as that of an employee or subordinate official in the order of the Interstate Commerce Commission now in effect,...

IV.

Section 2, Ninth, of the Act, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representative of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event an election is required.

FINDINGS OF FACT

I.

The Assistant Road Foreman of Engines on the LIRR is primarily responsible for the safe, efficient, and economical operation of trains. A person in this position spends a significant amount of his time supervising passenger service operations and evaluating train and engine performance. He occasionally operates trains in order to check equipment. Historically, Assistant Road Foremen on the LIRR are promoted from the craft or class of Locomotive Engineers. They continue to accumulate seniority in the Engineers craft or class.

II.

Assistant Road Foremen of Engines possess a significant degree of supervisory authority. They conduct investigations and trials, and make recommendations in the issuance of discipline and related administrative duties.

III.

The major activities of Training Specialists employed by the LIRR include conducting classroom and field instruction, and researching and developing various training techniques and materials. Of the approximately 13 Training Specialists employed by the Carrier on the date of the Board's investigation, only two were formerly Engineers. The rest had either been hired from the outside, or were former members of other crafts or classes such as Machinists, Trainmen, Electricians, and Carmen.

DISCUSSION

I.

There have been two Board decisions in recent years which have dealt with the job classifications at issue in this case.

In The Long Island Rail Road, 7 NMB No. 164 (1980) the Board noted that the LIRR and the BLE had stipulated that the position of Assistant Road Foreman of Engines was that of an employee or subordinate official under the Act.

In The Long Island Rail Road, 8 NMB No. 120 (1981) the Board found,

> "...the Assistant Road Foreman of Engines and the Engineer Training Specialist do not share a community of interest with the Clerical, Office, Station and Storehouse Employees craft or class" at 409.

This determination, however, was made without access to information subsequently provided by the LIRR. Further investigation which would have clarified this issue was delayed by pending litigation.

II.

According to the LIRR, Assistant Road Foremen of Engines have the power to remove Engineers from the ranks in disciplinary cases. However, this factor is insufficient to categorize these employees as management officials, since they spend only 5% of their time dealing with discipline and related administrative matters. Nothing in ICC determination Ex Parte 72 is inconsistent with this conclusion.

The evidence reveals that Assistant Road Foremen of Engines spend a majority of their time in on-site supervision of passenger train crews and in monitoring engine and equipment operations.

The following is a listing of the major activities of Assistant Road Foremen, including the carrier's estimate of time spent on each activity:

1) Supervising commission hour operations of passenger service at assigned terminals to assure proper equipment, crews availability and movement of trains in accordance with schedules. [40%]

2) Evaluate train and engine performance, making recommendations for improved performance. Review motive power and train operation with Road Foreman for current problems for future changes. [10%]

3) Conduct train rides for checks on equipment, attendance and performance of crews and equipment. Make calls on employees injuries and/or researching passenger complaints. [35%]

4) Disruptions in service, i.e., derailments, breakdowns, and accidents to retard normal operation. Act in the capacity of the engineer. [10%]

5) Conduct investigations, trials, take statement of facts concerning operational problems. Make recommendations in the issuance of discipline and related administrative duties. Review overtime and claims. [5%]

III.

As stated in The Long Island Rail Road, 8 NMB No. 120 (1981), the Board examines various factors in order to determine the appropriate craft or class for purposes of representation under the Act. Among these are collective bargaining history, duties and responsibilities of the employees, and work-related community of interest.

The record in this case reveals that Assistant Road Foremen of Engines are properly part of the craft or class of Engineers based on a number of reasons. All of the Assistant Road Foremen are former Engineers who continue to accumulate seniority within that craft or class. They work on occasion as Engineers. They are represented by the BLE in certain matters and pay dues to the BLE. And finally, they work closely and in constant contact with the Engineers.

IV.

All the Training Specialists are members of the Personnel Management Department and are required to train all crafts or classes. Although the Training Specialists who were previously engineers still accumulate seniority within that group, by the nature of their duties and by virtue of their community of interest with the other Training Specialists they do not belong to the craft or class of Engineers.

CONCLUSION

The Board finds that Assistant Road Foremen of Engines are so closely aligned with the craft or class of Engineers that they should be included in that craft or class. Accordingly, the Board hereby dockets this application as Case No. R-5336, and finds a dispute to exist among Assistant Road Foremen of Engines on the LIRR and directs that an all-mail ballot accretion election be held using a cut-off date of April 27, 1982. Ballots will be counted in Washington, D.C. Applicant BLE to be placed on the ballot.

Based on its findings above, that portion of the BLE's application which deals with the Engineer Training Specialists is hereby dismissed.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. Walter J. Lysaght
Mr. John F. Sytsma
Mr. James Molloy

RKQ/mja

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 156

In the matter of the : CASE NO. R-5322

REPRESENTATION OF EMPLOYEES : CERTIFICATION

of : September 28, 1982

SCHEDULED SKYWAYS :

Pilots and Co-Pilots :

The services of the National Mediation Board were invoked by the Air Line Pilots Association (ALPA), on July 23, 1982, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, personnel described as "Pilots and Co-Pilots", employees of Scheduled Skyways.

At the time this application was received, these employees were not represented by any organization or individual.

The Board assigned Board Representative Laurette Piculin to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Pilots and Co-Pilots, and by direction of the Board the Board Representative was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Board Representative Roland Watkins, who was assigned to count the ballots in this case.

Number of Employees Voting:

	ALPA	Number of Employees Eligible
Pilots and Co-Pilots	43	73

The National Mediation Board further finds that the Carrier and employees in this case are, respectively, a Carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties, as well as the Carrier, were given due notice of the Board's investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Air Line Pilots Association, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Pilots and Co-Pilots, employees of Scheduled Skyways, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

RKQ/rwa

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

9 NMB No. 157

In the Matter of :
:
ARBITRATION : DETERMINATION
: AND ORDER
Pursuant to Subsection 508 (d) :
of the Rail Passenger Service : September 28, 1982
Act, as Amended :
:

The National Mediation Board has received a copy of a Resolution adopted by the Board of the Southeastern Pennsylvania Transportation Authority (SEPTA) and a letter dated September 24, 1982, from the legal counsel of the Northeast Commuter Services Corporation (NCSC), referencing the forementioned Resolution.

The Resolution of the SEPTA Board states in pertinent part:

> "WHEREAS, at its March 24, 1982 meeting, the Board authorized and directed the Chairman to give notice to AMTRAK Commuter, now trading as Northeast Commuter Services Corporation (NCSC) and Conrail of SEPTA's intention to contract with NCSC; and
>
> "WHEREAS, subsequent events, including a September 7, 1982 decision of the National Mediation Board have limited SEPTA's options and make it necessary to rescind the March 24, 1982 resolution referred to above.
>
> "NOW, THEREFORE, BE IT RESOLVED, that the resolution of March 24, 1982 pursuant to which the Chairman gave notice of SEPTA's intention to contract with Northeast Commuter Services Corporation, is hereby rescinded.

> "FURTHER RESOLVED, that the Chairman is hereby authorized and directed to give notice to both NCSC and Conrail of such rescision and of SEPTA's intention to operate the service." (Emphasis added)

The letter on behalf of NCSC states in pertinent part:

> "In view of this [SEPTA] Resolution, there is no longer any commuter service to be operated by NCSC and there will be no Conrail employees transferred to NCSC pursuant to Section 508 of NERSA. Accordingly, NCSC hereby requests that the pending arbitration proceedings under Section 508 be dissolved insofar as NCSC is concerned."

Based on the foregoing information, the National Mediation Board determines that NCSC is not presently a proper party to the arbitration required by Section 508 of the Rail Passenger Service Act, 45 U.S.C. §588, as amended by Section 1145 of the Northeast Rail Service Act of 1981, and the Board's Determination and Order of September 7, 1982, 9 NMB No. 144 and Determination on Motions for Reconsideration of September 13, 1982, 9 NMB No. 148. The Board therefore indefinitely suspends the arbitration proceeding involving NCSC, pending any future change in the status of NCSC. Any motion to reconsider this ORDER, supported by factual information not currently available to the Board, must be received at the Board's offices by 10:00 A.M. on October 4, 1982.

By ORDER of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

-Service Sheet Attached-

RKQ/sks

Parties:

- Amtrak Commuter Services Corporation (d/b/a Northeast Commuter Services Corp.)

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  Alan J. Davis, Esq.
  Jeffrey L. Braff, Esq.
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- American Train Dispatchers Association

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  President
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Mr. Edward L. McCulloch
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- Brotherhood of Maintenance of Way Employee

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Mr. O. W. Jacobson
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- Brotherhood of Railroad Signalmen

Mr. R. T. Bates
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Mr. B. E. Britcher
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- International Association of Machinists & Aerospace Workers

Mr. W. W. Winpisinger
International President
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Mr. George DeHague
Railroad Coordinator
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- International Brotherhood of Boilermakers and Blacksmiths

Mr. Harold K. Buoy
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- International Brotherhood of Electrical Workers

Mr. A. M. Ripp
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Mr. Harvey L. Lindenmuth
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- International Brotherhood of Firemen & Oilers

Mr. George Francisco
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Mr. G. J. Francisco, Jr.
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Mr. R. A. Sabol
Vice General Chairman
595 Ellicott Square Building
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- International Brotherhood of Teamsters

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- Sheet Metal Workers International Association

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- Transport Workers Union of America

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- Consolidated Rail Corporation

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Dennis Arouca, Esq.
Labor Counsel
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Philadelphia, PA 19104

LEGEND FOR DETERMINATIONS

Cert.	Certification
DI	Dismissal
DI-ISI	Dismissal-Insufficient Showing of Interest
DI-Vol. Rec.	Dismissal-Voluntary Recognition
DI-WDI	Dismissal-Withdrawn During Investigation
FUI	Findings Upon Investigation
FUI-DI	Findings Upon Investigation-Dismissal
Rev.of Cert.	Revocation of Certification

LABOR ORGANIZATIONS

AFA	Association of Flight Attendants
AFPA	Air Florida Pilots Association
ALEA	Air Line Employees Association
ALPA	Air Line Pilots Association
APA	Airborne Pilots Association
BLE	Brotherhood of Locomotive Engineers
BMWE	Brotherhood Maintenance of Way Employes
BRAC	Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employes
BRAC-ARSA Division	Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employes - American Railway Supervisors Association Division
BRC	Brotherhood Railway Carmen of the United States and Canada
BSPA	Big Sky Pilots Association
BTB&B	Brotherhood of Track and B&B Employees of America
IAM&AW	International Association of Machinists and Aerospace Workers
IBEW	International Brotherhood of Electrical Workers
IBT	International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America
ILA	International Longshoremen's Association
LIRRP-PBA	Long Island Rail Road Police - Police Benevolent Association
NLRB	National Labor Relations Board
OPEIU	Office & Professional Employees International Union

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PAPA	Professional Association of Pilots for Apollo Airways
RYA	Railroad Yardmasters Association
TWU	Transport Workers Union of America
UAW	United Automobile, Aerospace and Agriculture Implement Workers of America, International Union
UPA	Union of Professional Airmen
USA	United Steelworkers of America
UTU	United Transportation Union
YSC	Yardmasters Steering Committee

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